

## FEEDBACK QUESTIONNAIRE



Please take a few moments to provide us feedback on the satellite broadcast session. More changes in acquisition laws and regulations can be expected and we would like to know if this is a good way to “get the word out” to the acquisition workforce. **MAIL TO ARCC, 2001 N. BEAUREGARD ST., ALEXANDRIA, VA 22311-1772 OR FAX TO (703) 820-9753**

1. Were you aware of the new simplified acquisition/electronic contracting procedures before you attended the broadcast session?

☐ Yes      ☐ No

2. Do you think that the material presented in the session will help you do your job?

☐ Yes, it will be useful to me in carrying out my job.  
☐ It was good for general awareness, but won't help me in my job.  
☐ No, it will be of little use to me.

3. How did you like the way the material was presented?

☐ It was presented in an interesting way that kept my attention most of the time.  
☐ It was OK.  
☐ It put me to sleep.

4. In your opinion, the length of the session was:

☐ Too long      ☐ Just about right      ☐ Too short

5. How do you rate the question and answer period following the presentations?

☐ It was extremely valuable in adding to the information from the main session.  
☐ It brought out some new information.  
☐ It was a waste of my time.

6. What did you think of the reference material provided in the session handout?

☐ It gave me all the information I needed.  
☐ It had most of the information I needed.  
☐ It failed to give me the information I needed.

7. Do you have any comments about the adequacy of the facilities or support at the site where you attended the session?

8. If we did another of these sessions, what would you like to see changed to make it better?

9. Would you prefer a regional conference to a satellite broadcast, even if it meant you did not get the training as soon?

( ) Yes      ( ) No

# SIMPLIFIED ACQUISITION PROCEDURES

Satellite Broadcast Reference Material

28 June 1995



prepared by the

ACQUISITION REFORM COMMUNICATIONS CENTER

in conjunction with the

FEDERAL ACQUISITION INSTITUTE

## ACKNOWLEDGMENTS

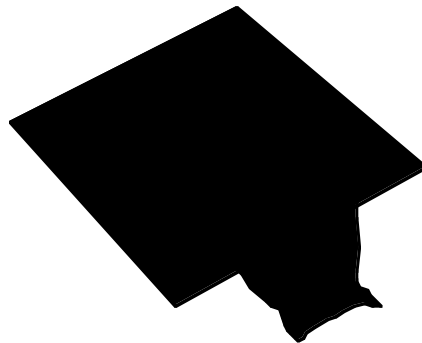
This document would not have been possible without the advice and assistance of Diana Maykowskyj, Mary Ackerman, COL Kevin O'Brien, and other members of the Simplified Acquisition Procedures/FACNET team. We would also like to acknowledge the support of Thomas M. Crean, Esq., President of the Defense Acquisition University; COL Sharolyn I. Hayes, Director of the ARCC; and CAPT Barry Cohen, USN and David Drabkin, Esq. of the Office of the Deputy Under Secretary of Defense (Acquisition Reform).

## COMMENTS

The Federal Acquisition Institute (FAI) welcomes questions or comments related to this document. Fax questions or comments c/o the FAI to 202-501-3341 or send them by e-mail to [michael.miller@gsa.gov](mailto:michael.miller@gsa.gov)

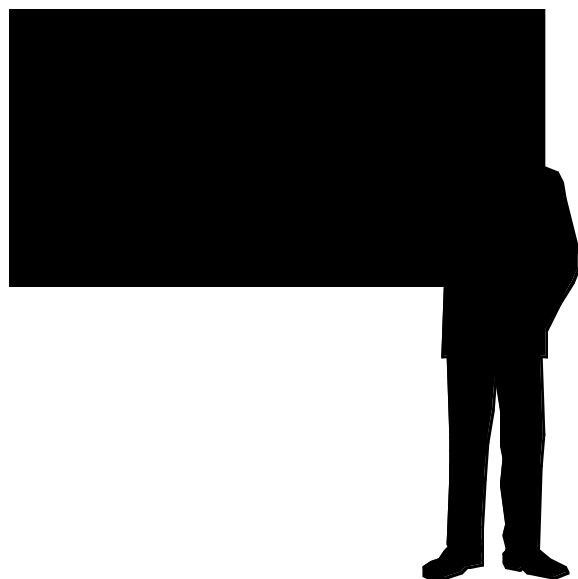
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**PLEASE FILL OUT AND RETURN THE  
FEEDBACK QUESTIONNAIRE ATTACHED  
TO THE FRONT OF THIS HANDOUT.**

# SECTION 1



## **SECTION 1 - INTRODUCTION AND DECISION TREE**

### **Introduction**

This handout provides reference material to help you implement the Federal Acquisition Regulation (FAR) changes that will be covered in the satellite broadcast session.

You will find the following information in this handout:

- A series of diagrams showing the functions performed in accomplishing a simplified acquisition -- broken out into the presolicitation, solicitation-award, and post-award administration phases. The blocks on the diagrams give you a quick overview of what functions have been affected by the FAR changes discussed in the broadcast. It also indicates those functions which will be undergoing change at a later date (Section 2).
- A narrative analysis which describes in greater detail the changes to each of the affected functions in the overall process (Section 3).
- A side-by-side comparison of the appropriate FAR paragraphs showing the text both before and after the current changes (Section 4).
- A list of people in DoD, the military services, other Federal agencies, and industry that you can call on to answer any questions you have as you implement the new simplified acquisition procedures (Section 5).
- Additional information on other topics covered in the broadcast (Section 6).

### **Decision Tree**

The procedures you must use in purchasing goods and services will vary depending upon the dollar value of the purchase and whether or not your contracting activity has an interim or full certified FACNET capability. For further explanation of FACNET see the "Threshold Determinations" discussion which begins on page 3-4.

The following pages provide a "decision tree" to help you decide which procedures must be used in a particular procurement. For each case, the tree lists the major procedures that apply and provides references to the appropriate FAR sections.

# SECTION 2





## SECTION 2 - SIMPLIFIED ACQUISITION FUNCTIONS

The following three pages present a diagram of the simplified acquisition process — listing simplified acquisition functions roughly in order of performance.

However, you should not expect to perform every function for every buy. For example, most purchase orders are not modified, and few are terminated. Also, the order in which functions are performed often varies from buy to buy.

As a high level summary, each function is coded to show whether or not it was changed by the FAR cases listed in Section 1 and whether or not it will be affected by pending FAR cases (“coming attractions”). The conventions used in the process diagrams are as follows.

Function Title	No change
<u>Function Title</u>	Change pending (“coming attraction”)*
FUNCTION TITLE	Changed*

\* may be used together in some functions

# SECTION 3



## SECTION 3 - FUNCTIONAL ANALYSIS OF FAR CHANGES

In this section, you will find a short description of every function listed in the simplified acquisition process diagrams in Section 2. For each function, you will generally find the following information displayed as shown below:

**FUNCTION:** The title of the function (i.e., "Purchase Requests").

<b>Duties</b>	The duty or duties performed by Federal purchasing agents or contract specialists in carrying out the function.
<b>Conditions</b>	The conditions under which the duty is typically performed including decisions made in arriving at the function as well as documentation and information required as inputs to carrying out the function.
<b>Performance Goals</b>	The decisions, documentation, and information required as an output of performing the function including descriptions of what constitutes satisfactory performance levels.



Impact of the following rules on that function.

- FAC 90-24, "Federal Acquisition Regulation; Micro-Purchase Procedures", effective as an interim rule on December 15, 1994.
- FAR case 94-770, "Simplified Acquisition Procedures/FACNET", effective as an interim rule on July 3, 1995.
- FAR case 91-104, "Electronic Contracting", published as an interim rule.

If the above rules have an impact on the function, you will find a reference to the FAR as modified by the above rules. FAR sections are referenced as §xx.xxx.

### COMING ATTRACTIONS:



Coming Attractions are highlights of proposed rules that will take effect sometime after July 3, 1995. However, these rules are subject to change prior to publication in final form.

- FAR case 94-790, "Acquisition of Commercial Items", published as a proposed rule in the Federal Register on March 1, 1995. Note that the new FAR Part 12 applies to all acquisitions of commercial items above the micro-purchase threshold. At 12.203(a), the proposed language states that:

"Contracting officers may use the procedures in Parts 13, Simplified Acquisition Procedures; 14, Sealed Bidding; or 15, Contracting by Negotiation, as appropriate, for the acquisition of commercial items. However, regardless of the procedures being used, when a requirement in this part is inconsistent with a requirement in another part of this chapter, **this Part 12 shall take precedence.**" [Emphasis added]

- FAR case 94-701, "Contract Award Implementation", published as a proposed rule in the Federal Register on January 9, 1995.
- FAR case 94-730, "Protests, Disputes and Appeals", published as a proposed rule in the Federal Register on January 10, 1995.

## **FUNCTION: Forecasting Requirements**

<b>Duty</b>	Forecast probable requirements.
<b>Conditions</b>	Given staff meeting minutes, acquisition histories, market data, proposed budgets, and other such information.
<b>Performance Goals</b>	From the available data, accurately predict probable requirements for supplies and services that are likely to be incorporated in purchase requests from requiring activities supported by the contracting office. Plan to meet those requirements through the most cost-effective simplified procedures and instruments given the nature of the requirements.

No Changes.

## **FUNCTION: Purchase Requests**

<b>Duties</b>	Accept the Purchase Request or request additional signatures and/or information from the requiring activity to complete the Purchase Request. Establish files on accepted Purchase Requests and control information on the procurement prior to solicitation.
<b>Conditions</b>	Given Purchase Requests
<b>Performance Goals</b>	Purchase Requests, after review by the Contracting Office, contain all elements necessary to proceed with the purchase. Data on planned purchases are not disclosed to competing firms prior to soliciting quotes.

## Fewer Purchase Requests for Micro-Purchases

☞ A micro-purchase by definition is any acquisition that does not exceed \$2,500. (FAC 90-24, §13.101, definitions). The FAR encourages agency heads to delegate micro-purchase authority to end users — which means that they will buy for their offices rather than submitting purchase requests to contracting activities. (FAC 90-24, §13.601(a) and 13.601(d))

☞ Contracting officers are not considered procurement officials if their authority is limited to the micro-purchase threshold — if the head of the contracting activity determines that it is unlikely that the individual will conduct acquisitions in a total amount greater than \$20,000 in any 12 month period. (FAC 90-24, §3.104-4)

☞ On the other hand, requiring activities are still prohibited from splitting requirements to stay under the micro-purchase threshold. (FAC 90-24, 13.602(c)).

## FUNCTION: Market Research

<b>Duties</b>	Obtain data from acquisition histories and other in-office sources. Collect and compile additional market information.
<b>Conditions</b>	Given Purchase Requests, related contract files, and access to on-line and hardcopy sources of market information.
<b>Performance Goals</b>	Identify all relevant sources of information readily available within the contracting office and extract data necessary for analyzing the requirement, sourcing the procurement, soliciting quotes, evaluating quotes, and awarding contracts. From sources outside the contracting office, collect and compile any additional data necessary for analyzing the requirement, sourcing the acquisition, soliciting quotes, evaluating quotes, and awarding contracts (such as commercial practices for warranties, buyer financing, maintenance and packaging and marking).

## COMING ATTRACTIONS: Requirement For Market Research

☞ Before soliciting quotes, conduct market research when adequate information is not available and the circumstances justify its cost. (94-790)

☞ Extent of research may vary, but consider collecting information on:

- Capable sources.
- Availability of commercial items.
- Customizing, modifying or tailoring practices.
- Terms such as warranty, buyer financing, discounts, etc.
- Laws and regulations unique to the item.
- Distribution and support capabilities of suppliers. (94-790)

☞ Techniques include:

- Contacting experts regarding market capabilities.
- Reviewing the results of recent market research.
- Publishing formal requests for information.
- Querying databases/on-line communication.
- Obtaining source lists from other agencies or associations.
- Reviewing catalogs and product literature.
- Holding presolicitation conferences. (94-790)

## FUNCTION: Threshold Determinations

<b>Duties</b>	<ol style="list-style-type: none"><li>1. Develop a position on the expected value or price of the requirement.</li><li>2. Determine whether the expected price is:<ul style="list-style-type: none"><li>• At or below the threshold for use of FAR Part 13 simplified procedures.</li><li>• At or below the Simplified Acquisition Threshold.</li></ul></li></ol>
<b>Conditions</b>	Given Purchase Requests and data on the market.
<b>Performance Goals</b>	Accurately estimate the proper price or value of the requirement. Given that estimate, correctly determine whether the procurement is at or below the dollar threshold for the use of micro-purchasing or simplified acquisition procedures.

### The Simplified Acquisition Threshold

☞ The “Simplified Acquisition Threshold” (SAT) is \$100,000 (94-770, §13.101, definitions). However, do NOT assume that you have authority to use FAR Part 13

simplified procedures up to \$100,000. The SAT is not necessarily the same as the dollar threshold for use of simplified acquisition procedures.

## Threshold For The Use of Simplified Acquisition Procedures

☞ Upon the effective date of the interim rule, you may immediately use FAR Part 13 procedures for actions at or below \$50,000.

Until your activity has an interim certified FACNET, use FAR Part 14 and 15 procedures to award contracts between \$50,000.01 and \$100,000. However, effective July 3, 1995:

- Contracts at or below SAT are reserved for small business concerns even if awarded through FAR Part 14 or 15 procedures (see SAT Set Asides).
- Certain clauses are not applicable to any contract at or below SAT even if awarded through FAR Part 14 or 15 procedures (see “Preparing RFQs”).

☞ When the senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies certifies your contracting activity’s interim FACNET capability, you may use FAR Part 13 simplified procedures for actions up to and including \$100,000 that are: (i) conducted through a system with such capability, or (ii) exempted from interim FACNET. This authority, however, expires on December 31, 1999, if your agency does not by that time have a certified full FACNET capability.

☞ After December 31, 1999, you may use Part 13 simplified procedures for actions between \$50,000.01 and \$100,000 ONLY IF you are in a Federal department or agency that has certified full FACNET capability. (94-770, §13.103(b))

☞ If the initial estimated price exceeds the dollar level for FAR Part 13 simplified procedures, you may not use those procedures even if the awards are priced under that dollar level. Moreover, the FAR continues to prohibit contracting officers from splitting requirements to stay under the SAT. (94-770, §13.103(c)).

☞ EXCEPTION: For acquisitions awarded and performed, or purchase to be made, outside the United States in support of a contingency operation — the simplified acquisition threshold is \$200,000. And you can immediately use Part 13 simplified procedures for such actions up to that dollar amount. (94-770, §13.101, definitions).

## What Is FACNET?

FACNET is the “Federal Acquisition Computer Network”. The FAR defines FACNET as “the Governmentwide Electronic Commerce/Electronic Data Interchange (EC/EDI) systems architecture for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and

the private sector, employs nationally and internationally recognized data formats, and provides universal user access.”

Given this definition, many EC/EDI systems in place today are not FACNET certifiable. Federal buyers, for instance, have long used electronic bulletin boards to post RFQs and receive quotations. Such bulletin board transactions are NOT FACNET transactions. To be a FACNET transaction, the electronic data has to pass through a FACNET certified EC/EDI system.

## How Does a Typical FACNET EC System Work?

A typical FACNET transaction begins at the computer desktop of a contracting officer. Contracting officers enter data into FACNET by completing blanks on electronic, on-screen forms for RFQs, POs, and the like. From there, the data:

- 1) Enters a Gateway that translates the data to meet standardized EDI formats , encrypts the data as necessary, and routes the data to Network Entry Points.
- 2) Enters one of the two Network Entry Points (NEPs) — one in Columbus, Ohio and one in Ogden, Utah. The NEPs sort and route the data to Value Added Networks (VANS).
- 3) Enters the VANS. VANS are commercial information services (many of which are the same firms that provide on-line services to home computers). The VANS collect, sort, and distribute electronic information to and from vendors.
- 4) Arrives at the electronic desktop of individual vendors which have registered as “Trading Partners” with the Central Contractor Registration Center, Columbus, Ohio 614-692-5543.

## What Is “Interim Certified FACNET”?

The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies, is responsible for certifying that a contracting office has implemented an “interim” FACNET. This certification is made to the Administrator of OFPP. To qualify for certification, the contracting office must be able to use EC/EDI for the following functions:

- 1) Provide widespread public notice of solicitations,
- 2) Issue solicitations, and
- 3) Receive responses to solicitations and associated requests for information.

Contracting offices must be able to perform these functions for contracts between \$2,500 and \$100,000. (94-770, §4.501 and §4.505-1)

## What Is Full FACNET”?



“Full FACNET” means that the head of an agency, with OFPP concurrence, has certified to the Congress that the agency:

- 1) Has implemented all FACNET functions listed below, and
- 2) Used FACNET for more than 75% of eligible contracts between the micro-purchase threshold and the SAT during the preceding fiscal year. (94-770, §4.501 and 4.505-2)

A full FACNET system means the agency can electronically:

- Provide widespread public notice of contracting opportunities, and issue solicitations.
- Receive responses to solicitations and associated requests for information.
- Provide widespread public notice of awards and issuance of orders (including price).
- Receive questions regarding solicitations, if practicable.
- Issue contracts and orders, if practicable.
- Initiate payments to contractors, if practicable.
- Archive data relating to each procurement action. (94-770, §4.504)

A full FACNET system means that vendors can electronically:

- Access notices of solicitations.
- Access and review solicitations.
- Respond to solicitations.
- Receive contracts and orders, if practicable.
- Access information on contract awards and issuance of orders.
- Receive payment by purchase card, electronic funds transfer, or other automated means, if practicable. (94-770, §4.504)

## **FUNCTION: Funding**

### **Part A: Funded Requirements**

<b>Duty</b>	Determine if funds are available to commit the Government on a contractual action before solicitation.
<b>Conditions</b>	Given Purchase Requests and data on the market.

<b>Performance Goals</b>	<p>Correctly identify the type of funds provided, the period funds expire, and whether committed funds are sufficient for the acquisition.</p>
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## Part B: Options

<b>Duty</b>	Determine whether to include option provisions and clauses in Requests for Quotations (RFQs) and Purchase Orders (POs).
<b>Conditions</b>	Given Purchase Requests and data on the market.
<b>Performance Goals</b>	Provide for options in RFQs and POs when options would lower the expected cost to the Government of meeting additional requirements.

☞ Part 13 expressly permits options in purchase orders if :

- The requirements of subpart 17.2 are met, and
- The aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures under this part. (94-770, §13.112).

## FUNCTION: Requirements Documents

<b>Duty</b>	Critique proposed requirements documents and related elements of the Purchase Request.
<b>Conditions</b>	Given Purchase Requests and other related documents.
<b>Performance Goals</b>	<p>The requirements documents — as selected, modified, or drafted by the requiring activity after review by the contracting activity — are phrased in terms that:</p> <ul style="list-style-type: none"> <li>• The market can satisfy.</li> <li>• To the maximum extent practicable, describe functions to be performed, the performance required, or essential physical characteristics (NOT design characteristics). A brand name or equal specification is one way to achieve this goal.</li> <li>• Establish a valid and reliable benchmark for determining whether offered supplies or services meet the minimum functional need.</li> <li>• Encourage offerors to supply commercial items or (to the extent that commercial items suitable to meet the agency's needs are not available) other nondevelopmental items.</li> <li>• Enable all available commercial or other nondevelopmental items which can meet the minimum functional need to be considered technically acceptable.</li> <li>• Exclude all products or services (commercially available or not) from consideration that cannot meet the actual minimum functional need.</li> <li>• Include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.</li> <li>• Promote competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired.</li> </ul>

## COMING ATTRACTIONS: New Policies On Requirement Documents

☞ The new term “requirements documents” replaces such terms as “purchase descriptions”. (94-790)

☞ As a matter of policy, the FAR continues to require that agencies:

- Promote maximum practicable competition.
- State requirements in terms of --
  - ◊ Functions to be performed;
  - ◊ Performance required; or
  - ◊ Essential physical characteristics
- Include restrictive provisions only to describe minimum needs. (94-790)

☞ The FAR as a matter of policy now also requires agencies to define requirements in terms that enable and encourage offerors to supply commercial items, or, to the

extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items, in response to the agency solicitations.

- Define requirements to encourage offerors to supply commercial or NDI.
- Provide commercial or NDI opportunity to compete in any procurement.
- Require contractors to incorporate commercial or NDI as components.
- Modify requirements to ensure that requirements can be met by commercial or NDI. (94-790)

☞ Competition advocates now have a positive obligation to root out requirements documents and SOWs that needlessly inhibit not only competition but also the acquisition of commercial items. (94-790)

## FUNCTION: Statements of Work

<b>Duty</b>	Critique statements of work (SOWs) and related elements of the Purchase Request.
<b>Conditions</b>	Purchase Requests and data from market research
<b>Performance Goals</b>	<p>Correctly identify parts of the statement of work which are inconsistent with the technical evaluation factors (if any), instructions for submission of supporting information, and other parts of the Purchase Request. The statement of work, as written by the requiring activity after review by the Contract Specialist:</p> <ul style="list-style-type: none"> <li>• Is complete, with a clear-cut division of responsibility between the contracting parties.</li> <li>• Is stated in terms that the market can satisfy.</li> <li>• Encompasses all commercially available products or services that can meet the actual minimum functional need.</li> <li>• Excludes all products or services that cannot meet the actual minimum functional need.</li> <li>• To the maximum extent practicable, describes functions to be performed, the performance required, or essential physical characteristics — rather than design characteristics.</li> <li>• Encourages offerors to supply commercial items or (to the extent that commercial items suitable to meet the agency's needs are not available) other nondevelopmental items.</li> <li>• Includes restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.</li> <li>• Promotes competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired.</li> </ul>

COMING ATTRACTIONS: New Policies on Requirements Documents Incorporated In SOWs

# FUNCTION: Services & Construction

## Part A: Authority to Purchase Services

<b>Duty</b>	Identify requests to purchase personal services.
<b>Conditions</b>	Given Purchase Requests and data on the market.
<b>Performance Goals</b>	Avoid contracts for unauthorized personal services, thereby precluding the circumvention of agency personnel ceilings and maintaining proper control of Government work.

☞ The FAR continues to allow the acquisition of personal services through simplified procedures only when there is express statutory authority for such acquisitions. (94-770, §13.103(d))

## Part B: Wage Determinations

<b>Duty</b>	For work covered by the Service Contract Act or Davis-Bacon, identify required skill classifications and prepare requests for wage determinations from the Department of Labor (DoL).
<b>Conditions</b>	Given Purchase Requests, acquisition histories, and data on the market.
<b>Performance Goals</b>	Correctly (1) determine whether the Service Contract Act or Davis-Bacon applies to the purchase, (2) identify the required skills to which it applies, and (3) incorporate Department of Labor wage determinations (including fringe benefits).

No Change. Davis-Bacon requirements for wage determinations still apply to construction contracts over \$2,000; the Service Contract Act requirements for wage determinations still apply over \$2,500 for covered contracts.

## FUNCTION: Use Of Government Property And Supply Sources

<b>Duty</b>	Determine whether to furnish Government property (GFP).
<b>Conditions</b>	Given a Purchase Request and existing Government property that might be available for use by the contractor
<b>Performance Goals</b>	Identify and correctly apply the policies and procedures related to this determination given the type of property at issue (e.g., material or agency peculiar property).

☞ When the cost of the item to be repaired does not exceed the simplified acquisition threshold, purchase orders for property repair need not include a Government property clause. (94-770, §45.106(e)).

## FUNCTION: Government Sources

### Part A. FAR Part 8 Required Sources

<b>Duty</b>	Determine whether to order from a required source.
<b>Conditions</b>	Given Purchase Requests and information on deliverables available from FAR Part 8 sources.
<b>Performance Goals</b>	Correctly determine whether the FAR Part 8 source is required. Identify and apply all relevant criteria in determining whether to order from a Government source. Correctly prepare orders.

☞ You must still acquire supplies and services available from the required sources in FAR Part 8. This is true regardless of whether the acquisition is above or below the micro-purchase threshold or above or below SAT. (94-770, §13.103(a) and §19.502-1)

You need not comply with set asides when ordering from required sources of supply (such as Federal Prison Industries, Committee for Purchase from People who are

Blind or Severely Disabled, and Federal Supply Schedule contracts) or Federal Information Processing multiple award schedule contracts. (94-770, §13.103(a)).

You can use “an established electronic communications format” to place delivery orders against Schedules. (91-104, §8.405-2)

#### **Part B. Interagency Acquisitions Under the Economy Act**

<b>Duty</b>	Determine the need and identify procedures for ordering from other Federal departments and agencies.
<b>Conditions</b>	Given Purchase Requests and data on products or services available from other Federal agencies.
<b>Performance Goals</b>	Comply with the Economy Act or other policies authorizing interagency acquisitions.

COMING ATTRACTIONS: New Policies on Economy Act Transactions



# FUNCTION: Open Market Sources

## Part A. Commercial Source Lists

<b>Duty</b>	Develop commercial source lists.
<b>Conditions</b>	Given Purchase Requests, acquisition histories, and data on the market.
<b>Performance Goals</b>	<p>Identify a sufficient numbers of vendors to obtain effective price and/or technical competition and capability to meet the Government's needs. Record for each source whether it is a:</p> <ul style="list-style-type: none"><li>(A) Small business.</li><li>(B) Small disadvantaged business.</li><li>(C) Women owned business concerns.</li></ul> <p>Ensure that small business concerns are given opportunities to respond to solicitations issued using simplified acquisition procedures.</p>

☞ Source lists are required **only** for non-FACNET acquisitions over the micro-purchase threshold. (94-770, §13.106-1(a)(7))

☞ Source list profile information should be obtained from the Government-wide Central Contractor Registration system when it is available.

## Part B. FACNET Registration

<b>Duty</b>	Advise potential sources on FACNET registration and participation.
<b>Conditions</b>	Given requests from vendors
<b>Performance Goals</b>	Provide the correct 1-800- EDI -3414.

☞ The FAR establishes the following requirements for vendor registration:

**§4.503 Contractor registration.**

(a) In order for a contractor to conduct electronic commerce with the Federal government, the contractor must provide registration information to the Central Contractor Registration.

(b) The contractor will be required to submit information in accordance with the Federal implementation conventions of the ASC ANSI X.12 transaction set for contractor registration.

**FUNCTION: 8(a) Contracts**

<b>Duties</b>	1. Determine whether to meet the requirement through an 8(a) contract.  2. Award an 8(a) contract.
<b>Conditions</b>	Given Purchase Requests, SBA contacts, and related market data.
<b>Performance Goals</b>	Correctly determine the capability of potential 8(a) sources to meet the need.

☞ As an alternative to awarding under a small business set aside, you can acquire the services of an 8(a) vendor as provided in FAR Subpart 19.8. (94-770, §13.105(c)(5) & 19.502-2(a))

## FUNCTION: SAT Set Asides

<b>Duty</b>	Determine whether to solicit quotations from other than small business concerns.
<b>Conditions</b>	Given Purchase Requests, acquisition histories, data on potential sources, and lack of a required Government source.
<b>Performance Goals</b>	Do not request quotes from large business concerns if you reasonably expect quotes from at least two responsible small business concerns that will likely be competitive in terms of market price, quality, and delivery.

### No Set-Aside for Micro-purchases

☞ Purchases under the micro-purchase threshold are NOT subject to any form of small business set-aside (94-770, §19.502-1).

### Exclusive Reservation for Small Business Concerns of Acquisitions Under SAT Other Than Micro-purchases.,

Every acquisition between \$2,500.01 and \$100,000 is set aside exclusively for small businesses (94-770, §13.105(a) and §19.502-2). This set-aside does not apply to:

- Acquisitions outside the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (94-770, §13.105(b)).
- Orders from a Part 8 required source (94-770, §13.105(c) & §19.502-1).
- Orders from the Federal Supply Schedules (mandatory or optional) or the Federal Information Processing Multiple Award Schedule Contracts (94-770, §19.502-1)
- Acquisitions over \$25,000 by “participating agencies” (see FAR §19.1004 to determine if your agency is a participant in this program) from designated industry groups (listed below) pursuant to the “Small Business Competitiveness Demonstration Program”. While the set aside for such acquisitions is not automatic, note that:
  - ◇ Acquisitions at or below \$25,000 from designated industries are set aside exclusively for “emerging” small business concerns (more on this below), and
  - ◇ An agency under specified circumstances may re-instate the small business set aside for acquisitions over \$25,000 from these industries (94-770, §13.105(c)(5) and §19.502-2(a) and (d))

☞ Contracting officers can solicit quotes from large business concerns for actions under SAT when they are unable to obtain offers from two or more small business

concerns that are competitive with market prices and with regard to the quality and delivery of the goods or services being purchased. (94-770, §19.502-2(a))

### Eligibility for the SAT Small Business Set-Aside is Not Automatic for Dealers, Brokers, and Other Resellers

☞ Small business resellers are NOT automatically eligible for a small business set aside if they propose to supply the products of a large domestic manufacturer or producer. However, this constraint does not apply if SBA waives the non-manufacturing rule. (94-770, deletion of §19.501(f)).

☞ Absent the waiver, a nonmanufacturer is eligible for a small business set-aside only if (1) it employs no more than 500 employees, (2) furnishes a product manufactured or produced in the United States, and (3) the product was made or produced by a small business manufacturer or producer.

☞ If SBA waives the rule, a small business supplier can furnish domestic products made by large businesses or products made in foreign manufacturing or production facilities (within constraints of the policies on foreign acquisition in Part 25) — as long as the small business reseller meets the other tests of FAR Part 19.102 for set-aside eligibility.

The waivers granted by the SBA as of February 6, 1995 are listed below:

Product/ service code	SIC code	Waiver name
2320	3537	Trucks, Four Wheel Drive
2420	3711	Tractor, Wheeled
2620	5014	Tire, Aircraft, Pneumatic
3610	3579	Copier/Duplicator, Machines
3805	3531	Construction, Loaders
3805	3531	Construction, Road Grader
3805	3531	Construction, Backhoe
3805	3533	Construction, Scrapers
3810	3531	Construction, Crane over 15 Ton
3820	3532	Construction, Drill Rigs
3825	3711	Sweepers, Street
3930	3589	Sweepers, Warehouse
4710	3312	Pipe & Tubing, High Nickel Alloy
5805	3661	Communications, Digital EPBX Equipment
5836	3651	Video Cassette Recorder
6135	3699	Batteries, Nuclear
6770	3861	Film, Photographic
6810	2869	Ethyl Acetate

6810	2812	Soda Ash
6810	2869	Trichlorethane, 1,1,1
6810	2869	Methylene Chloride
6810	2812	Caustic Soda
6810	2812	Sodium Hydroxide
6810	2869	NN-Dimethyl Formamide
6810	2869	Propylene Glycol
6810	2865	Benzene
6810	2911	Hydrocarbon Diluent
6810	2819	Acid, Hydrofluoric
6810	2873	Ammonium Sulfate
6810	2819	Calcium Nitrate (Uncoated)
6810	2819	Acid, Hydrochloric
6810	2819	Acid, Boric
6810	2819	Acid, Enriched Boric
6810	2819	N-Dodecane
6810	2869	Methyl Isobutyl Ketone
6810	2865	Toluene
6810	2819	Heptane HPCL
7021	3571	Computer, Mainframe & Peripherals
7025	3577	Computer, Laser Printer
7220	3996	Tile and Roll, Vinyl Surface
7220	2273	Carpet, Woven, 6-ft Vinyl Back Broadloom
7220	2273	Carpet Tile
7220	2273	Carpet, 6-ft Vinyl Back Broadloom
7530	2621	Paper, Copy
7610	2732	Thesauruses & Dictionaries
7730	3653	Television Receiver Sets
7730	3651	Disc Players, Compact
8915	2091	Tuna, Canned
8915	2033	Tomato Paste, Canned
8915	2033	Apricots, Canned
8915	2033	Spinach, Canned
8915	2033	Pineapple; Slices, Tidbits, Juice
8915	2033	Citrus Sections, Canned
8925	2062	Sugar, Granulated & Brown
9310	2062	Paper Bags (Small Hardware Type)
9510	3312	Bars & Rods, High Nickel Alloy
9515	3312	Plate, Sheet, Strip & Foil; Stainless & High Nickel Alloy
9520	3312	Structural Shapes, High Nickel Alloy
9525	3356	Wire, Nonelectrical, High Nickel Alloy
9530	3355	Bars & Rods, High Nickel Alloy, Aluminum, Nickel-Copper, Nickel-Copper-Aluminum, Copper, Copper-Nickel
9535	3353	Plate, Sheet & Strip; Aluminum
9535	3353	Plate, Sheet & Strip, Nickel-Copper

9545	3353	Plate, Sheet, Strip, Foil & Wire; High Nickel Alloy
9650	3331	Copper Cathodes
9650	3331	Copper & Nickel Cathodes
9650	3339	Nickel Brickettes

## “Emerging Small Business” Set Aside for the Comp Demo Program

☞ Reserve acquisitions between \$2,500.01 and \$25,000 exclusively for emerging small businesses if the contract is for supplies and services from the following industry groups (see 19.10). (94-770, §13.502-2(a)).

(1) Construction under standard industrial classification (SIC) codes that comprise Major Groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codes Y216 and Z216).

(2) Refuse systems and related services including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205.

(3) Architectural and engineering services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713, which are awarded under the qualification-based selection procedures required by 40 U.S.C. 541 et seq. (see Subpart 36.6) (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404). [FAC 90-23]

(4) Nonnuclear ship repair (including overhauls and conversions) performed on nonnuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

However, this set-aside does not apply to:

- Acquisitions outside the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (94-770, §13.105(b)).
- Orders from a Part 8 required source (94-770, §13.103(a)).
- Acquisitions over \$25,000 from the above industry groups. (§19.10).

## FUNCTION: Competition Requirements

### Part A. Non-FACNET Acquisitions Between \$25,000 and \$50,000

<b>Duty</b>	Determine whether to restrict competition
<b>Conditions</b>	Given Purchase Requests, acquisition histories, and market data.
<b>Performance Goals</b>	Correctly determine whether one or more of the reasons for not synopsisizing at FAR 5.202 also justifies restricted competition.

☞ Part 6 does NOT apply to contracts awarded by use of simplified acquisition procedures.

However, there still may be good reason to restrict competition for some acquisitions — basically the same reasons that justify restricted competition today under Part 13. However, you do NOT have to comply with the criteria and procedures of Part 6 to justify and document restricted competition. Instead, document such a decision as provided in Part 13.

You may use EC/EDI hardware and software for restricted competition.

### Part B. Non-FACNET Acquisitions Between \$50,000 and \$100,000

☞ Part 13 simplified acquisition procedures may only be used for a non-FACNET acquisition above \$50,000 if the contracting activity has been certified as interim FACNET compliant and the contract action is exempt from the use of FACNET under FAR '4.506(a).

### Part C. Non-FACNET Acquisitions At or Under \$25,000

<b>Duty</b>	Determine whether to solicit quotations from less than three sources.
<b>Conditions</b>	Given Purchase Requests for requirements with expected prices between the micro-purchase threshold and \$25,000, acquisition histories, and market data.
<b>Performance Goals</b>	Solicit quotes from at least three sources unless the supplies or services are reasonably available from only one source .

☞ Ordinarily, three quotes still suffice for acquisitions under \$25,000. The FAR now identifies two potential reasons (among other possible reasons) for concluding that supplies or services are “reasonably available” from only one source:

- Urgency
- Only one available source (94-770, §13.106-1(a)(3) and (a)(4))

### Part D. Micro-Purchases

<b>Duty</b>	Determine whether to obtain competition.
<b>Conditions</b>	Given purchases under the micro-purchase threshold.
<b>Performance Goals</b>	<p>Award without competition if the price is reasonable. Consider verifying price reasonableness only if —</p> <ul style="list-style-type: none"><li>• You suspect or have information to indicate that the price may not be reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or</li><li>• Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is limited to, other supplies or services that have recently been purchased on a competitive basis).</li></ul>

☞ Ordinarily, one quote still suffices for acquisitions at or below \$2,500. Also, you are still required to distribute micro-purchases “equitably” among qualified suppliers. (FAC 90-24, §13.602(b) and §13.603).



## FUNCTION: Establishing BPAs

<b>Duties</b>	1. Identify the need for a BPA  2. Establish a BPA
<b>Conditions</b>	Given expected requirements for like requirements
<b>Performance Goals</b>	Establish a BPA when a BPA would preclude the preparation of numerous purchase orders (e.g., when there is a recurring need for the same or similar requirements but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably). Comply with requirements for sourcing the BPA and establishing BPA terms and conditions.

No change.

## FUNCTION: Unsolicited Proposals

<b>Duty</b>	Determine whether to return an unsolicited proposal to the offeror, or justify a sole source acquisition to procure the good or service offered in the unsolicited proposal.
<b>Conditions</b>	Given unsolicited proposals and market data
<b>Performance Goals</b>	Correctly obtain and verify determinations from requiring activities on whether the proposal meets the agency's tests for being considered a valid "unsolicited" proposal and whether it meets an agency need. Correctly identify the conditions which preclude competition for valid unsolicited proposals and/or outline alternatives for obtaining competition in the future. Correctly identify when needs addressed in an invalid "unsolicited" proposal can be competed.

No change. [Contracting officers are more likely to see such proposals under a Simplified Acquisition Threshold of \$100,000 than under the small purchase threshold of \$25,000.]

## FUNCTION: Lease Vs. Purchase

### Part A: Soliciting Offers To Lease

<b>Duty</b>	Determine whether to solicit quotes for: <ul style="list-style-type: none"><li>• Leasing the item</li><li>• Purchasing the item</li><li>• Both (the Government reserves the right to award either a lease or a sales agreement, depending on quoted terms for each).</li></ul>
<b>Conditions</b>	Given Purchase Requests, acquisition plans, results of market research, and acquisition histories.
<b>Performance Goals</b>	Solicit the type of offer that will result in the lowest expected total life cycle cost to the Government.

### Part B: Evaluating Proposed Leases

<b>Duty</b>	Compare quoted sales terms against quoted leasing terms.
<b>Conditions</b>	Given a solicitation that provided for the submission of both types of quotes.
<b>Performance Goals</b>	Correctly determine whether the lowest total life cycle cost to the Government can be achieved through leasing or through purchasing the commodity.

No change. [Contracting officers are more likely to encounter offers to lease equipment under a Simplified Acquisition Threshold of \$100,000 than under the prior small purchase threshold of \$25,000. ]

## FUNCTION: Price-Related Factors

<b>Duty</b>	Identify any necessary price-related factors
<b>Conditions</b>	Given Purchase Requests, acquisition histories, and market data.
<b>Performance Goals</b>	Only consider price-related factors necessary to detect that quote, or that combination of quotes, which would result in the lowest total cost to the Government over the life of the deliverable. Requests information from vendors in the solicitation only if necessary to apply the factors.

☞ You may consider price-related factors, such as the administrative cost of the acquisition. You may also consider warranty provisions and other factors that potentially would affect life cycle cost. (94-770, §13.106-1(a)(1)).

☞ Part 13 expressly permits options in contracts awarded through simplified acquisition procedures — which may give rise to the use of options as an evaluation factor for such awards. (94-770, §13.112).

## FUNCTION: Evaluation Factors Other Than Price

<b>Duties</b>	<ol style="list-style-type: none"><li>1. Determine whether to award on “best value” or on price and price-related factors alone.</li><li>2. Identify non-price factors in broad terms (e.g., past performance and/or technical capability).</li></ol>
<b>Conditions</b>	Given non-price factors recommended by requiring activities, acquisition histories, market data, Purchase Requests, requirements documents and/or the statement of work.
<b>Performance Goals</b>	Award on best value when non-price factors can be rationally applied and there will be a net benefit to the Government from considering such factors. When a decision is made to award on the basis of best value, notify vendors of that decision in the RFQ. Request information from vendors necessary to apply non-price factors only if not available from other sources.

☞ You may consider factors other than price, such as past performance and quality. That is, you can award on “best value” instead of automatically awarding to the lowest price quoter. When soliciting quotes, notify suppliers of the basis of award (e.g., that you will be awarding on best value). (94-770, §13.106-1(a)(1))

When selecting on factors other than price, you do NOT have to prepare formal evaluation plans, or conduct discussions, or score the quotes or offers. Instead, you can evaluate quotes based on such information as your personal knowledge of products and firms, previous experience, or customer surveys. (94-770, §13.106-1(b))

# FUNCTION: Selecting the Ordering or Simplified Acquisition Method

## Part A. For Micro-purchases

<b>Duty</b>	Select the method for obtaining the supplies or services: <ul style="list-style-type: none"><li>• Government commercial purchase card.</li><li>• BPA call</li><li>• SF-44</li><li>• Over-the-counter purchase out of imprest funds or by use of third party drafts.</li><li>• Delivery order</li><li>• Purchase Order</li></ul>
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☞ All the above tools are available for micro-purchasing. The FAR specifically provides that “micro-purchases may be awarded using any of the purchasing methods covered by part 13”. However, the FAR also strongly encourages the use of the Government commercial purchase card and electronic purchasing techniques for such purchases. (FAC 90-24, §13.601(b) and (c)).

## Part B. For Other Than Micro-purchases

<b>Duty</b>	Select the method for obtaining the supplies or services: <ul style="list-style-type: none"><li>• Purchase Order (electronic or paper; with or without bilateral signatures; for issuance through FACNET or non-FACNET channels)</li><li>• BPA call (electronic or oral)</li><li>• Delivery or task order (electronic or oral)</li><li>• SF 44</li><li>• Government commercial purchase card (when you have authority to use the card above \$2,500 for purchasing as well as payment).</li></ul>
<b>Conditions</b>	Given Purchase Requests, data from market research, and expected prices between the micro-purchase threshold and SAT
<b>Performance Goals</b>	Select the SA method that is most suitable, efficient, and economical given the circumstances of the acquisition.

☞ Generally use the simplified method that is most suitable, efficient, and economical in the circumstances of each acquisition. (94-770, FAR 13.104)

☞ Only use the SF 44 above the micro-purchase threshold for purchases made under unusual and compelling urgency or (new) in support of a contingency operation. (94-770, §13.505-3(b))

☞ The FAR now talks of electronic purchase orders in lieu of written telecommunications. But conditions for use are essentially the same. (94-770, §13.506)

## FUNCTION: Determine Method of Payment

<b>Duties</b>	Determine whether payment will be made by: <ul style="list-style-type: none"><li>• Government commercial purchase card</li><li>• Fast Payment procedures</li><li>• Traditional billing procedures (with or without electronic funds transfer)</li></ul>
<b>Conditions</b>	Given a Purchase Request, an expected price between the micro-purchase threshold and SAT, and information on the market
<b>Performance Goals</b>	Use the most appropriate method.

☞ FACNET purchases may be paid by means of the Government commercial purchase card or by electronic funds transfer or other such means. (94-770, §4.504(b)(6); §13.601(c)).

☞ No change has been made to the Fast Payment procedure — the \$25,000 ceiling remains (except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis). (94-770, FAR Subpart 13.3)

☞ The new method of payment is the purchase card. You may use the card to pay for transactions up to SAT as authorized by your agency. (94-770, §4.504(b)(6); §13.601(c))

### Potential Benefits Of Payment By Purchase Card:

- Fewer invoices and better control of expenditures. Instead of receiving hundreds of bills from vendors, the purchase card company provides the purchase card holder with one statement covering purchases made with the card during the prior period.
- Reduced risk to the Government. If a vendor fails to perform, the Government can withhold payment from the purchase card company for the supplies or services. The purchase card company in turn credits the amount of the sale to the Government and charges back the amount of the sale to the vendor through the vendor's bank.
- Less risk of dealing with a non-responsible firm. Banks tend to rigorously screen the financial and other qualifications of vendors that are authorized to accept payment by purchase cards.
- In markets for which the purchase card is a customary method of payment, a broader vendor base — companies are likely to prefer being paid by the card (a method of payment with which they are very familiar) than through the unique and unfamiliar procedures established by the terms and conditions of Government payment clauses.
- The Government receives a rebate from the purchase card company based upon volume of total purchases made with the card (a la the "Discovery" card).

### Potential Drawbacks:

- You will need to make arrangements with the finance office to handle the accounting issues inherent in use of the card (e.g., ensuring that each transaction ultimately tracks with the proper fund cite).
- Purchase cards are not an accepted method of payment in every market. On the other hand, purchase cards are becoming more popular with purchasing agents for industry, State Governments, and local governments. Hence, there should be fewer and fewer markets over time that are unfamiliar with the purchase card as a method of payment.
- Vendors forfeit from 2% to 5% of the purchase price to the bank for every transaction paid by a purchase card. Some vendors therefore decline to accept purchase cards. Others may try to pass that cost to the Government through higher prices.

## FUNCTION: Purchase Planning

<b>Duties</b>	<ol style="list-style-type: none"><li>1. Determine whether an informal plan is necessary.</li><li>2. Update or prepare an informal plan.</li></ol>
<b>Conditions</b>	Given the Purchase Request, acquisition history, results of market research, and procurement plans (if any) for prior acquisitions.
<b>Performance Goals</b>	Only prepare informal plans for acquisitions that will take place over an extended period and require extensive participation by personnel outside the contracting activity (e.g., when selecting on factors other than price). Record key acquisition decisions and milestones. Correctly assign responsibilities and identify approving officials. Planning provides sufficient leadtime to obtain maximum practicable competition and meet the Government's needs in the most effective, economical, and timely manner.

No Change.



## FUNCTION: Determine Method of Solicitation

<b>Duties</b>	Determine whether to solicit: <ul style="list-style-type: none"> <li>• Orally</li> <li>• By issuing a paper RFQ</li> <li>• By issuing a FACNET RFQ</li> <li>• Through other electronic channels.</li> </ul>
<b>Conditions</b>	Given Purchase Requests, the selected simplified acquisition procedure, and market information
<b>Performance Goals</b>	<p>When the contracting office has a certified FACNET, use FACNET to solicit quotes whenever FACNET is cost effective and practicable.</p> <p>For non-FACNET purchases, solicit orally for contract at or below \$25,000. If the acquisition exceeds \$25,000, solicit orally (where possible), on paper or electronically. For construction contracts over \$2,000, only use paper or electronic solicitations.</p>

☞ For acquisitions between the micro-purchase threshold and SAT, FACNET is the preferred method of soliciting and receiving quotes and providing notice of Government purchase requirements. (94-770, §4.502(b) & §13.103(e)).

☞ However, you can solicit outside of an interim certified FACNET if:

- The contract is exempt from widespread public notice under FAR 5.202. When this exception applies, you do NOT have to prepare a written determination for the file. (94-770, §4.506(a))
- The head of the contracting activity has determined that it is not practicable or cost-effective to process a class of purchases via FACNET. This determination has to be in writing, and the HCA has to centrally maintain a file of such determinations. (94-770, §4.506(a) & §13.106-1(a)(2)).
- The contracting officer has documented in writing that FACNET processing of that procurement is not “practicable or cost effective”. HCAs must also centrally maintain a file of these determinations. (94-770, §4.506(a) & §13.106-1(a)(2)).

☞ When soliciting quotes outside of FACNET:

- For construction contracts over \$2,000, only use paper or electronic solicitations.
- For other contracts at or below \$25,000, solicit orally to the maximum extent practicable.
- For contracts over \$25,000, solicit on paper or electronically. You can also solicit orally over \$25,000 (e.g., for acquisitions that are exempt from the requirement for a synopsis in the Commerce Business Daily). (94-770, §13.106-1(a)(2))

## FUNCTION: Conduct Oral Solicitations

<b>Duty</b>	Conduct oral solicitations
<b>Conditions</b>	Given Purchase Requests and a decision to conduct an oral solicitation
<b>Performance Goals</b>	Describe the requirement in complete and unambiguous terms. Do not compromise quotes from other vendors. If soliciting quotes under the total small business set aside, provide quoters with substantially the same information as conveyed by the clause at FAR 52.219-6.

☞ The clause at FAR 52.219-4, Notice of Small Business-Small Purchase Set-Aside, no longer exists and therefore no longer has to be summarized in an oral solicitation. In its place, convey the information from the clause at FAR 52.219-6.

## FUNCTION: Preparing RFQs

<b>Duty</b>	Prepare Requests for Quotations
<b>Conditions</b>	Given a decision to solicit on paper or electronically, the Purchase Request, acquisition history, information on the market, and presolicitation decisions on such matters as whether the requirement is for a commercial item, type of contract, nature of goods or services being procured, et. al.
<b>Performance Goals</b>	<p>Incorporate or reference all terms and conditions planned for the Purchase Order that will affect the ability of vendors to prepare accurate and complete quotations.</p> <p>Select the format appropriate for the acquisition (e.g., combined synopsis/solicitation; OF 347, et. al.).</p>

☞ The following clauses are NO LONGER REQUIRED FOR solicitations and contracts at or below SAT (94-970, §13.111).

- (1) 28.102-4, Miller Act solicitation requirements.
- (2) 52.203-1, Officials Not to Benefit
- (3) 52.203-4, Contingent Fee Representation and Agreement
- (4) 52.203-5, Covenant Against Contingent Fees
- (5) 52.203-6, Restrictions on Subcontractor Sales to the Government
- (6) 52.203-7, Anti-Kickback Procedures
- (7) 52.215-1, Examination of Records by Comptroller General
- (8) 52.222-4, Contract Work Hours and Safety Standards Act-Overtime Compensation
- (9) 52.223-5, Certification Regarding a Drug-Free Workplace
- (10) 52.223-6, Drug-Free Workplace, except for individuals

Do NOT incorporate the above clauses in any solicitation or contract under \$100,000 whether or not you are using simplified acquisition procedures to award the contract.

☞ Establish deadlines for the submission of responses to solicitations which afford contractors a reasonable opportunity to respond — especially when soliciting via FACNET or over \$25,000. Consider the circumstances of the individual procurement such as the complexity, commerciality, availability, and urgency when establishing the solicitation response time. (94-770, §5.203(b) and §13.103(f))

## COMING ATTRACTIONS: Part 12 Requirements

☞ The new standard for acquiring commercial items: Except as otherwise directed by FAR Part 12, only incorporate provisions, terms and conditions in solicitations for commercial items that are consistent with customary commercial practice. (94-790)

☞ There is a new combined CBD synopsis/solicitation for commercial items. Use this format when:

- Acquiring commercial items over \$25,000 by a method other than FACNET, and
- The combined synopsis/solicitation would not exceed 12,000 textual characters (i.e., the solicitation is relatively simple and no lengthy addenda are necessary). (94-790)

Use SF XXXX for all other commercial items. (94-790)

☞ The FAR requires contracting officers to incorporate three new provisions and two new clauses to solicit bids for commercial items. Notwithstanding prescriptions contained elsewhere in the FAR, these are the only provisions and clauses required for solicitations and contracts for the acquisition of commercial items.

- Use 52.212-1, Instructions to Offerors - Commercial.
- Use 52.212-3, Offeror Representations and Certifications - Commercial Items.
- Use 52.212-4, Contract Terms and Conditions - Commercial Items.
- Use 52.212-5, Contract Terms and Conditions Required To Implement Statutes Or Executive Orders - Commercial Items. (94-790)

☞ Tailor the provision at 52.212-1 and the clause at 52.212-4 to reflect commercial practices. This can be done without requesting a deviation. However, you can only add a non-commercial term or condition to this provision or this clause if you obtain a waiver. (94-790)

## FUNCTION: Types of Contracts

<b>Duty</b>	Select the contract type or types to solicit.
<b>Conditions</b>	Given acquisition histories, market data, and the Purchase Request.
<b>Performance Goals</b>	<p>Correctly identify the factors in pricing a procurement that are the most uncertain, determine the potential risks entailed by the uncertainties, and select the type of contract that will:</p> <ol style="list-style-type: none"> <li>1. Minimize the potential risks (in terms of cost and performance) inherent in the requirement and the expected cost of contract administration (both to the Government and industry), taken together.</li> <li>2. Provide a reasonable allocation of risk between the Government and the contractor.</li> <li>3. Conform to FAR Part 16 and agency requirements and limitations on the use of the different contract types.</li> </ol> <p>Do not use cost-plus-a-percentage-of-cost contracts.</p>

☞ Agencies may authorize use of other than firm fixed price contracts for simplified acquisitions. (94-770, §13.501(a) and §16.001)

For example, fixed price level of effort term contracts might be authorized for investigation or study in a specific research and development area. §16.207-3 allows use of this contract type only when —

- (a) The work required cannot otherwise be clearly defined;
- (b) The required level of effort is identified and agreed upon in advance;
- (c) There is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort; and
- (d) The contract price is **\$100,000 or less**, unless approved by the chief of the contracting office. [Emphasis added]

☞ Agencies might require contracting officers to document their reasons for the contract type selected. (94-770, §16.103) This is especially likely if the agency authorizes use of other than fixed price contracts.

☞ You are not required to incorporate the clause at §52.216-1, Type of Contract, to notify quoters of the type of contract that is contemplated. (94-770, §16.105) When soliciting quotes, however, identify the contemplated type of contract if other than firm fixed price.

☞ D&Fs are no longer required for cost reimbursable contracts. (FAC 90-24)

## FUNCTION: Publicizing Proposed Acquisitions

<b>Duties</b>	1. Determine whether it is necessary to provide widespread public notice of the purchase.  2. If necessary, select and implement a method or methods of publicity
<b>Conditions</b>	Given an RFQ
<b>Performance Goals</b>	Market notified to the extent required or necessary for obtaining maximum practicable competition.

### FACNET Solicitations

☞ Certified FACNETs by definition enable you to provide widespread public notice of your solicitations. In other words, you can make an RFQ available to all FACNET vendors with one or several keystrokes.

☞ When using a certified FACNET to provide widespread public notice of solicitations under SAT, you are NOT required to publicize the acquisition in any other way. You do NOT have to post a paper copy of the RFQ on bulletin boards or an electronic copy on electronic bulletin boards. You do NOT have to synopsize the requirement in the Commerce Business Daily.

☞ When your contracting office has a certified interim FACNET, do you have to provide widespread public notice of **every** RFQ through FACNET? NO. You do NOT have to make an RFQ available to all FACNET vendors IF:

- The contract is exempt from widespread public notice under FAR 5.202. When this exception applies, you do NOT have to prepare a written determination for the file. (94-770, §4.506(a))
- The head of a contracting activity (HCA) has excluded that class of contracts from FACNET (94-770, §4.506(a)), AFTER documenting in writing that "FACNET processing of those procurements is not cost effective or practicable". HCAs must centrally maintain a file of these determinations.
- The Contracting officer has excluded that individual contract action from FACNET (94-770, §4.506(a)), AFTER documenting in writing that FACNET processing of that procurement is not "practicable or cost effective". HCAs must also centrally maintain a file of these determinations.

However, if you have not made the RFQ available to all FACNET vendors, the RFQ is subject to the publicizing requirements for non-FACNET purchases (see below).

☞ If the agency is operating under a certified full FACNET system, you can only go off FACNET for:

- That class or those classes of actions that the Federal Acquisition Regulatory Council has determined to be unsuitable for acquisition through FACNET (94-770, §4.505-2), AND
- For actions by a contracting office that has been exempted from FACNET (in whole or in part) by the head of the agency or designee (based on a written determination that FACNET processing is not cost effective or practicable for the contracting office, or portions thereof) (94-770, §4.506(b))

However, if you have not made the RFQ available to all FACNET subscribers, the RFQ is then subject to the publicizing requirements for non-FACNET transactions (see below).

## Non-FACNET Solicitations

☞ You must post notice in a public place of proposed contract actions exceeding \$10,000 through \$25,000 (or for Defense agencies exceeding \$5,000 through \$25,000). Now, however, the posting must include a statement that “all responsible sources may submit a quotation which, if timely received, shall be considered by the agency”. Moreover, the FAR now allows electronic posting.

Prior exceptions to this posting requirement still stand:

- The exemptions at §5.202(a)(1), (5) through (9) or (11).
- Oral solicitations.
- FACNET transactions.

Whether or not you post the purchase, you must consider ALL quotations timely received from responsible sources. (94-770, §5.101(a)(2))

☞ All contract actions over \$25,000 must be synopsisized in the Commerce Business Daily. (94-770, §5.101(a)(1)). However, section 5.202 of the FAR establishes 13 exceptions to this synopsis requirement. The newest exception is for FACNET transactions. (94-770, §5.101(a) and 5.202). A CBD synopsis is NOT required for non-FACNET transactions if —

- 1) A synopsis would inevitably disclose classified information.
- 2) The Government would be seriously injured if the agency complies with the time periods specified in §5.203.
- 3) The terms of an bilateral or international treaty effectively require contracting with specified sources.
- 4) Acquiring supplies or services through 8(a) contracts or from FAR Part 8 required sources.

- 5) The contract action is for utility services other than telecommunications services and only one source is available.
- 6) The contract action is an order placed under a requirements contract (what of task order contracts and calls against BPAs?)
- 7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219)
- 8) The contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see §6.003) and publication of any notice complying with §5.207 would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal. This exception does not apply if the contract action results from an unsolicited research proposal and acceptance is based solely upon the unique capability of the source to perform the particular research services proposed (see §6.302-1(a)(2)(i)).
- 9) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;
- 10) The contract action is made under the conditions:
  - ◊ Described in §6.302-3 and advance notice is not appropriate or reasonable (i.e., when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center).
  - ◊ The contract action is for purchases of brand-name commercial items for resale through commissaries or other similar facilities.
- 11) The contract action is made under the terms of an existing contract that was previously synopsisized in sufficient detail to comply with the requirements of §5.207 with respect to the current contract action (e.g., exercise of a priced option).
- 12) The contract action is by a Defense agency and the contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited. This exception does not apply to contract actions subject to the Trade Agreements Act (see Subpart 25.4). This exception also does not apply to North American Free Trade Agreement contract actions, which will be synopsisized in accordance with agency regulations.

☞ When preparing CBD synopses for SAs over \$25,000, include the following as part of Item 17, "Description" — (A) a description of the procedures to be used in awarding the contract (e.g., request for oral or written quotation or solicitation) and (B) the anticipated award date. (94-770, §5.207(c)(2)(xi))

☞ When synopsisizing any noncompetitive action, insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see §5.207(e)(3)). (94-770, §5.207(c)(2)(xiv))



## **FUNCTION: Preaward Inquiries**

No change.

## **FUNCTION: Solicitation Conferences/Site Visits**

No change.

## **FUNCTION: Amending/Canceling RFQs**

No changes.

## **FUNCTION: Processing Quotes**

<b>Duties</b>	<ol style="list-style-type: none"><li>1. Receive and control quotations.</li><li>2. Identify variances from RFQ terms and conditions.</li></ol>
<b>Conditions</b>	Given an RFQ and quotes.
<b>Performance Goals</b>	All quotes are kept secure. Correctly identify all variances from RFQ terms and conditions. Correctly distinguish "minor irregularities and informalities" from differences that would make it difficult or impossible to fairly compare the quote with other quotes.

☞ If solicited via FACNET, vendors must submit quotes by FACNET to be considered for award. However, this requirement does not take effect until the contracting office has published the appropriate notice in the Commerce Business Daily.

Look for the effective date of this policy in the Commerce Business Daily notice which announces that the contracting office has a certified interim FACNET. Such notices establish a date after which all quotes or other responses to FACNET solicitations must come through FACNET, unless otherwise authorized. (94-770, §4.505-1(d)).

☞ You must consider ALL quotations timely received from responsible sources. This is true whether or not you provided public notice of the purchase through posting, synopsis, or FACNET. (94-770, §5.101(a)(2))

## **FUNCTION: Late Quotations**

No change.

## **FUNCTION: Application of Non-Price Factors**

☞ In the past, contracting officers typically reverted to FAR Part 15 procedures, forms, and clauses for those actions under \$25,000 that involved the application of non-price factors on a “greatest value” basis. This is no longer necessary or encouraged.

## **FUNCTION: Price Analysis**

No change.

## **FUNCTION: Price-Related Information From Offerors**

No change. [We included this function because contracting officers are likely to require limited information on costs to verify price reasonableness for some sole source requirements or verify cost realism for some competitive actions under \$100,000. However, NEVER EVER ask vendors to supply “certified cost or pricing data.”]

In the past, contracting officers typically reverted to FAR Part 15 procedures, forms, and clauses for those rare actions under \$25,000 that required negotiations on the basis of limited cost information. This will no longer be necessary or encouraged.

## **FUNCTION: Cost Analysis**

No change. [We included this function because contracting officers are likely to require limited information on costs to verify price reasonableness for some sole source requirements or verify cost realism for some competitive actions under \$100,000.]

In the past, contracting officers typically reverted to FAR Part 15 procedures, forms, and clauses for those rare actions under \$25,000 that required negotiations on the basis of limited cost information. This is no longer necessary or encouraged.

## **FUNCTION: Need for Discussions**

No change.

## **FUNCTION: Factfinding**

No change.

## **FUNCTION: Negotiation Strategy**

No change.

## **FUNCTION: Conducting Negotiations**

No change.

## **FUNCTION: Responsibility**

No Change.

## **FUNCTION: Selection for Award**

☞ When other than price related factors are considered in selecting the supplier, document the file to support the final contract award decision. (94-770, §13.106-2(b))

☞ There are new FPDS reporting fields for awards to small disadvantaged business; women owned business concerns, number of offers, award of task order contracts, and awards for commercial items. OFPP is revising the form. (94-701) Note that neither FASTA nor the new FAR language changes the requirement to complete the form on all actions above \$25,000.

## **FUNCTION: Debriefing**

☞ When a supplier requests information on an award which was based on other than price alone, include a brief explanation of the basis for the contract award decision in the notice of award to that supplier. (94-770, §13.106-1(c)(2) )

## **FUNCTION: BPA Calls**

☞ No individual BPA call may exceed \$50,000, or \$100,000 when the procuring activity has certified interim FACNET. (94-770, §13.204)

☞ Generally make electronic calls against BPAs. Use oral calls instead of electronic calls only when the latter are not considered economical or practical. However, you may issue a paper call if necessary to ensure that the vendor and the purchaser agree on the transaction. (94-770, §13.204(b))

## **FUNCTION: Delivery Orders**

No change.

## **FUNCTION: Purchase Orders**

No change.

## **FUNCTION: Unpriced Orders**

☞ You may use unpriced orders when prices are not expected to exceed \$50,000, or \$100,000 when the procuring activity has certified interim FACNET. (94-770, §13.502(b)(1))

☞ Unpriced orders can be conveyed electronically. (94-770, §13.502(c))

## **FUNCTION: Protests**

COMING ATTRACTIONS: Changes are being proposed in the way that protests are handled by agencies, GAO, and GSBICA.

## **FUNCTION: Fraud and Exclusion**

No change.

## **FUNCTION: Contract Administration Planning**

No change.

## **FUNCTION: Post-Award Assistance to Vendors**

No Change.

## **FUNCTION: Receipt, Inspection, And Acceptance**

<b>Duties</b>	<ol style="list-style-type: none"><li>1. Monitor compliance with Contract Clauses by both the contractor and Government personnel.</li><li>2. Perform any actions required of the contracting officer under the terms of the contract.</li><li>3. Inform the contractor of any potential breaches, and</li><li>4. Resolve the problem, where possible, without resorting to a formal contractual remedy.</li></ol>
<b>Conditions</b>	Given a contract, the contract administration plan, and any other related document referenced in the contract.
<b>Performance Goals</b>	Properly enforce all contract and procedural requirements. Monitor actions of contracting officer representatives and other support personnel to preclude breaches by the Government. Identify and document potential breaches and report them to the contractor for correction as early as they occur. Accurately assess the impact of potential problems on performance and delivery requirements.

No Change.

## FUNCTION: Delays

<b>Duties</b>	1. Determine whether the delay is excusable  2. If excusable, determine the consideration (e.g., a performance time extension).
<b>Conditions</b>	Given the contract and evidence of performance delays.
<b>Performance Goals</b>	Correctly distinguish delays that are beyond the contractor's control and are without the fault or negligence of the contractor. Negotiate reasonable consideration.

### COMING ATTRACTIONS: Delays Under Part 12 Contracts

☞ Under the required clause at §52.212-4 for acquiring commercial items, contractors must notify the Government when there will be an excusable delay. Failure to notify the Government as soon as reasonably possible could result in termination for cause. Contractors cannot use “excusable delay” as defense if they fail to notify the Government about the excusable delay when it occurred. The only exception is if the contractor actually was not able to notify the Government immediately (e.g., delay due to a fire or flood). (94-790)

☞ Reasons for excusable delay are broader and more lenient under §52.212-4 than under the default clauses prescribed by Part 49. The standard changes from “causes beyond the control and without the fault or negligence” to “beyond the reasonable control of the Contractor and without its fault or negligence”. In particular, §52-212-4 expressly cites “delays of common carriers” as justifying a finding of excusable delay under 52.212-4, which is NOT a cited justification in Part 49 clauses. (94-790)

## FUNCTION: Stop Work

No change.

## FUNCTION: Remedies

<b>Duty</b>	Select and pursue a formal contractual remedy
<b>Conditions</b>	Given the purchase order, evidence of performance problems, and documentation of informal attempts to resolve the problems.
<b>Performance Goals</b>	Select the remedy that will best minimize the impact of the contractor's performance problems on the requirements, delivery schedule, and cost. Obtain reasonable consideration for any relief granted the contractor from purchase order terms and conditions. Document all decisions and contacts with the contractor sufficient to support the Government's position in the disputes or court proceedings. Correctly follow all prescribed procedures for the remedy.

### COMING ATTRACTIONS: Remedies Under Part 12 Contracts

☞ The clause at §52.212-4, "Contract Terms and Conditions - Commercial Items", provides the following remedies (expressly or implicitly):

- Rejection of nonconforming supplies or services prior to acceptance.
- Redress for breach of the implied warranty of merchantability.
- Revocation of acceptance for patent defects, fraud, gross mistake, or latent defect.
- Termination for cause.

In addition, addenda to that clause might provide for such remedies as those available under the offeror's commercial warranties.

☞ If acceptance is revoked under the clause at §52.212-4, "Contract Terms and Conditions - Commercial Items", the Government may demand:

- Correction or replacement of nonconforming supplies, or
- Reperformance of nonconforming services at no increase in contract price, or
- An adjustment to the contract price to reflect the reduced value of the nonconforming supplies or services. (94-790)

☞ Under the clause at 52.212-4, acceptance is not final for patent defects, where, in accordance with customary commercial practice, items were accepted based on the seller's assurances rather than on inspection of tendered items.

☞ Under the clause at 52.212-4, revocation of acceptance must occur (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before substantial change occurs in the condition of the item. This limitation does not apply to changes in condition caused by the defect. (94-790)

☞ Under the clause at 52.212-4, the Government can obtain redress for breach of the implied warranty of merchantability. The clause waives all other implied warranties (e.g., the implied warranty of fitness for a particular purpose and the implied warranty arising from course of dealing or trade usage) — but a contracting officer by tailoring can incorporate such warranties where consistent with commercial practice. Likewise, the contracting officer can agree to terms that disclaim the implied warranty of merchantability. (94-790)

## FUNCTION: Termination for Cause

<b>Duties</b>	<ol style="list-style-type: none"><li>1. Determine whether to cancel or terminate.</li><li>2. Cancel orders.</li><li>3. Terminate orders for cause.</li></ol>
<b>Conditions</b>	Given purchase orders, evidence of performance problems, requests for assurances to the vendor of performance, and requests for termination from the requiring activity and/or contractor.
<b>Performance Goals</b>	Cancel only when performance has not commenced or upon mutual agreement of the parties. Terminate for cause when there is no other alternative for obtaining performance, given the current contractor's problems and deficiencies, and the Government has a sustainable case for default.

### COMING ATTRACTIONS: Terminations Under Part 12 Contracts

☞ The Government retains the right to terminate both for cause and convenience under §52.212-4, Contract Terms and Conditions - Commercial Items. You may follow the administrative guidance in Part 49 where consistent with the requirements and procedures in that clause. (94-790)

☞ The Government may terminate for cause under §52.212-4:

- In the event of any default by the Contractor, or
- If the Contractor fails to comply with any contract terms and conditions, or
- If the Contractor fails to provide the Government, upon request, with adequate assurances of future performance.

These are basically the same three causes in FAR Part 49 default clauses. (94-790)



☞ The “termination for cause” section of §52.212-4, “Contract Terms and Conditions - Commercial Items” does not require a cure or show cause notice prior to issuing a termination notice. However, you must request adequate assurances of future performance prior to terminating for failure to provide such assurance. That request does not have to conform to the exact language prescribed in Part 49 for a cure notice. (94-790)

☞ “In the event of termination for cause, the Government [under §52.212-4] shall not be liable to the Contractor for any amount, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law”. Hence, the Government may seek any and all damages available for breach (except for consequential damages resulting from the seller’s breach). (94-790)

## FUNCTION: Contract Modifications

<b>Duties</b>	<ol style="list-style-type: none"><li>1. Determine whether a modification is needed.</li><li>2. Prepare, negotiate, and execute the modification.</li></ol>
<b>Conditions</b>	Given the purchase order and a request to modify the order.
<b>Performance Goals</b>	Cancel the order and reissue the RFQ if performance has not commenced. Modify the order when the proposed change is within the scope of work.

### COMING ATTRACTIONS:

☞ The clause at “**52.212-4 Contract Terms and Conditions - Commercial Items**” would NOT authorize unilateral changes (unless tailored to provide for such changes where consistent with commercial practice). Instead, the clause only allows supplemental agreements. (94-790)

☞ On constructive changes, the ratifying official may now be any official who has current authority to execute the contract action. Before, the ratifying official had to be an individual who had authority to execute the contract action at the time such action was necessary. (94-731)

## FUNCTION: Termination for Convenience

<b>Duties</b>	<ol style="list-style-type: none"><li>1. Determine whether to terminate for convenience.</li><li>2. Cancel orders.</li><li>3. Terminate orders for convenience</li></ol>
<b>Conditions</b>	Given purchase orders and requests for termination from the requiring activity and/or contractor.
<b>Performance Goals</b>	Cancel only when performance has not commenced or upon mutual agreement of the parties. Terminate for convenience if funds are insufficient, the requirement is no longer needed, or the quantity needed has been reduced. Also terminate for convenience if there has been a radical change in the requirement that is beyond the contractor's expertise.

### COMING ATTRACTIONS: Terminations Under Part 12 Contracts

☞ The Government retains the right to terminate both for cause and convenience under §52.212-4, Contract Terms and Conditions - Commercial Items. You may follow the administrative guidance in Part 49 where consistent with the requirements and procedures in that clause. (94-790)

☞ Contracts for commercial items establishes a new basis for convenience termination settlements — “Percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs that the Contractor can demonstrate have resulted from the termination.” (94-790)

## FUNCTION: Payment

No change.

## FUNCTION: Closeout

No change.

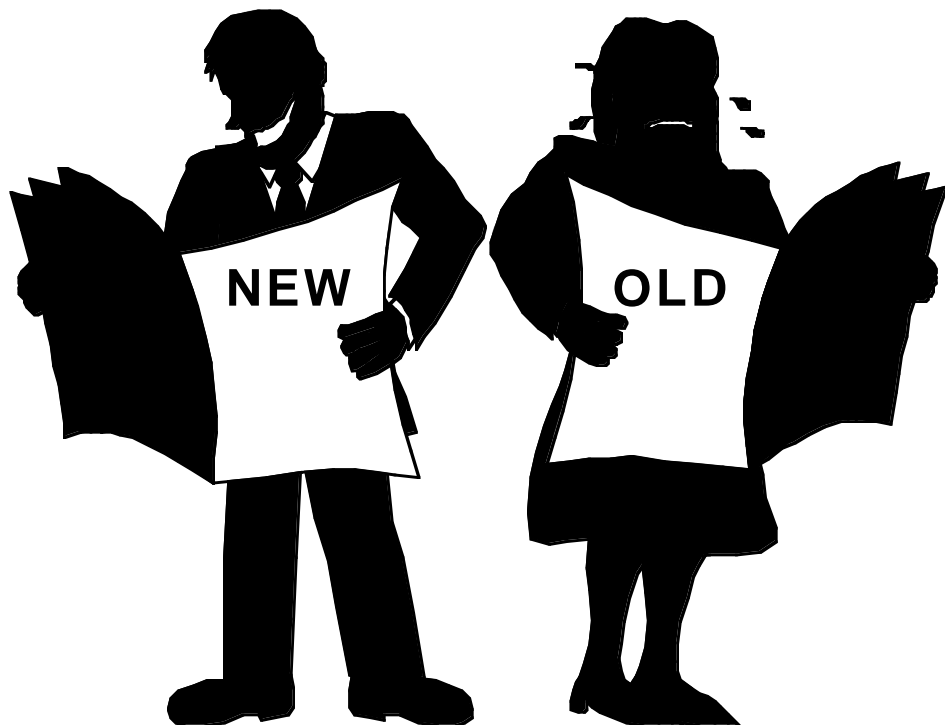
## FUNCTION: Claims

<b>Duty</b>	Analyze and recommend settlement positions and prepare a Contracting Officer's decision.
<b>Conditions</b>	Given a contract and a claim from a contractor.
<b>Performance Goals</b>	Correctly determine the validity of the claim and prepare a proper and complete decision. Protect the Government's interests while treating the contractor fairly and equitably within the terms of the contract.

#### COMING ATTRACTIONS: Changes in Claims Procedures

☞ The threshold for certifying a claim is now \$100,000. Contracting officer deadlines for issuing decisions on a claim reflect the new threshold of \$100,000 for certifying claims. Thresholds have also been increased to \$50,000 and \$100,000 respectively for the BCA small claim procedure and accelerated procedure. (94-730)

# SECTION 4



## SECTION 4 - TEXT OF FAR CHANGES

This section provides a “before and after” comparison of the changes to the Federal Acquisition Regulations (FAR) resulting from FAR case 94-770, “Simplified Acquisition Procedures/FACNET.”

The conventions used in the accompanying text are as follows:

<i>Interim</i>	<i>Prior</i>
The left-hand column labeled “ <i>Interim</i> ” shows the FAR language after making the changes required by FAR case 94-770. The new words are shown in bold, slightly larger letters ( <b>example of new words</b> ).	The right-hand column labeled “ <i>Prior</i> ” shows the FAR language as it was prior to the effective date of FAR case 94-770. Words deleted by the change are lined out ( <del>example of deleted words</del> ).
***** is used to indicate places where unchanged text had been omitted for brevity.	***** is used to indicate places where unchanged text had been omitted for brevity.

In some instances (noted in the accompanying text) completely new sections were added to the FAR.

## PART 2 — DEFINITIONS OF WORDS AND TERMS

### 2.201 Contract clause.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.202-1, Definitions, in solicitations and contracts except when the contract is not expected to exceed the <b>simplified acquisition threshold</b> in Part 13. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I. Additional definitions may be included, <i>provided</i> they are consistent with the clause and the Federal Acquisition Regulation.	The contracting officer shall insert the clause at 52.202-1, Definitions, in solicitations and contracts except when the contract is not expected to exceed the <del>small purchase limitation</del> in Part 13. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I. Additional definitions may be included, <i>provided</i> they are consistent with the clause and the Federal Acquisition Regulation.

## PART 3 — IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### 3.103-1 Solicitation provision.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the provision at 52.203-2, Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless— (a) The acquisition is to be made under the <b>simplified acquisition</b> procedures in Part 13; * * * * *	The contracting officer shall insert the provision at 52.203-2, Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless— (a) The acquisition is to be made under the <del>small purchase</del> procedures in Part 13; * * * * *

### 3.104-10 Solicitation provision and contract clauses.

<i>Interim</i>	<i>Prior</i>
* * * * * (c) The contracting officer shall insert the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, in all solicitations where the resultant contract award is expected to exceed the <b>simplified acquisition threshold</b> (see <b>Part 13.000</b> ) and all contracts and modifications to contracts exceeding that <b>threshold</b> which do not already contain the clause when the modification is expected to exceed that	* * * * * (c) The contracting officer shall insert the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, in all solicitations where the resultant contract award is expected to exceed the <del>small purchase limitation</del> (see 13.000) and all contracts and modifications to contracts exceeding that <del>limitation</del> which do not already contain the clause when the modification is expected to exceed that <del>limitation</del> . * * * * *

threshold.

\* \* \* \* \*

### 3.404 Solicitation provision and contract clause.

<i>Interim</i>	<i>Prior</i>
<p>* * * * *</p> <p>(b) The contracting officer shall insert the provision at 52.203-4, Contingent Fee Representation and Agreement, in solicitations, except when—</p> <p>(1) The contract amount is <b>expected to be at or below the simplified acquisition threshold in Part 13;</b></p> <p>* * * * *</p> <p>(c) The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in solicitations and <b>contracts exceeding the simplified acquisition threshold in Part 13.</b></p>	<p>* * * * *</p> <p>(b) The contracting officer shall insert the provision at 52.203-4, Contingent Fee Representation and Agreement, in solicitations, except when—</p> <p>(1) The contract amount is <del>not expected to exceed the limitation prescribed in 13.000;</del></p> <p>* * * * *</p> <p>(c) The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in <del>all</del> solicitations and <del>contracts.</del></p>

### 3.502-3 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in solicitations and <b>contracts exceeding the simplified acquisition threshold in Part 13.</b></p>	<p>The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in <del>all</del> solicitations and <del>contracts.</del></p>

### 3.503-2 Contract clause

<i>Interim</i>	<i>Prior</i>
<p><b>The contracting officer shall insert the</b> clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts <b>exceeding the simplified acquisition threshold in Part 13.</b></p>	<p><del>The</del> clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, <del>shall be inserted</del> in solicitations and contracts <del>for supplies or services.</del></p>

## PART 4 — ADMINISTRATIVE MATTERS

### 4.304 Contract clause.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.204-4, Printing/Copying Double-Sided on Recycled Paper, in solicitations and <b>contracts greater than the simplified acquisition threshold.</b>	The contracting officer shall insert the clause at 52.204-4, Printing/Copying Double-Sided on Recycled Paper, in solicitations and <del>contracts</del> . [FAC 90-27]

[The following is all new text pursuant to FAR case 94-770, “Simplified Acquisition Procedures/FACNET”]

### SUBPART 4.5 — ELECTRONIC COMMERCE IN CONTRACTING

Sec.

- 4.500 Scope of subpart.
- 4.501 Definitions.
- 4.502 Policy.
- 4.503 Contractor registration.
- 4.504 FACNET functions.
- 4.505 FACNET certification.
- 4.505-1 Interim certification.
- 4.505-2 Full certification.
- 4.505-3 Governmentwide certification.
- 4.505-4 Contract actions excluded.
- 4.506 Exemptions.
- 4.507 Contract actions using simplified acquisition procedures.

#### 4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of the Federal Acquisition Computer Network (FACNET) as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 426).

#### 4.501 Definitions.

ANSI X.12 means the designation assigned by the American National Standards Institute (ANSI) for the structure, format, and content of electronic business transactions conducted through Electronic Data Interchange (EDI). ANSI is the coordinator and clearinghouse for national standards in the United States.

Electronic commerce (EC) means a paperless process including electronic mail, electronic bulletin boards, electronic funds transfer, electronic data interchange, and similar techniques for accomplishing business transactions. The use of terms commonly associated with paper transac-



tions (e.g., “copy”, “document”, “page”, “printed”, “sealed envelope” and “stamped”) shall not be interpreted to restrict the use of electronic commerce.

Electronic data interchange (EDI) means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

Federal Acquisition Computer Network (FACNET) means the Governmentwide Electronic Commerce/Electronic Data Interchange EC/EDI systems architecture for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

Full FACNET means an agency has certified that it has implemented all of the FACNET functions outlined in 4.504, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), were entered into by the agency during the preceding fiscal year using FACNET.

Governmentwide FACNET means that the Federal Government has certified its FACNET capability, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), entered into by the executive agencies during the preceding fiscal year were made through full FACNET.

Interim FACNET means a contracting office has been certified as having implemented a capability to provide widespread public notice of, issue solicitations, and receive responses to solicitations and associated requests for information through FACNET. Such capability must allow the private sector to access notices of solicitations, access and review solicitations, and respond to solicitations.

Transaction Set means the data that is exchanged to convey meaning between Trading Partners engaged in EC/EDI.

Value-Added Network (VAN) means an entity that provides communications services, electronic mailboxing and other communications services for EDI transmissions.

Value-Added Service (VAS) means an entity that provides services beyond communications to its customers. These services may range from translation and segregation of the data to complete turn-key business systems support for customers.

#### **4.502 Policy.**

(a) The Federal Government shall use FACNET whenever practicable or cost effective.

(b) FACNET is the preferred method of soliciting and receiving quotes and providing notice of Government purchase requirements exceeding the micro-purchase threshold and not exceeding the simplified acquisition threshold (see 13.103(b)).

(c) Contracting officers may use FACNET for any contract action governed by the FAR, unless specifically exempted (see 4.506 and 13.106-1(a)(2)).

(d) Before using FACNET or any other method of electronic data interchange, the agency head shall ensure that the electronic data interchange system is capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

#### **4.503 Contractor registration.**

(a) In order for a contractor to conduct electronic commerce with the Federal Government, the contractor must provide registration information to the Central Contractor Registration.

(b) The contractor will be required to submit information in accordance with the Federal implementation conventions of the ASC ANSI X.12 transaction set for contractor registration.

#### **4.504 FACNET functions.**

(a) FACNET will permit agencies to do the following electronically--

- (1) Provide widespread public notice of contracting opportunities, and issue solicitations;
- (2) Receive responses to solicitations and associated requests for information;
- (3) Provide widespread public notice of contract awards and issuance orders (including price);
- (4) Receive questions regarding solicitations, if practicable;
- (5) Issue contracts and orders, if practicable;
- (6) Initiate payments to contractors, if practicable; and
- (7) Archive data relating to each procurement action.

(b) FACNET will permit the private sector to do the following electronically —

- (1) Access notices of solicitations;
- (2) Access and review solicitations;
- (3) Respond to solicitations;
- (4) Receive contracts and orders, if practicable;
- (5) Access information on contract awards and issuance of orders; and
- (6) Receive payment by purchase card, electronic funds transfer, or other automated means, if practicable.

#### **4.505 FACNET certification.**

##### **4.505-1 Interim certification.**

(a) A contracting office is considered to have implemented interim FACNET if —

(1) The contracting office — (i) Has implemented the FACNET functions described in 4.504(a)(1) and (2), and (b)(1), (2), and (3); and (ii) Issues notices of solicitations and receives responses to solicitations in a system having those functions;

(2) The contracting office can use FACNET for contracts, not otherwise exempted (see 4.506), that exceed the micro-purchase threshold but do not exceed the simplified acquisition threshold; and

(3) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies, has certified to the Administrator of OFPP that the contracting office has implemented interim FACNET.

(b) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies, shall notify the private sector via the Commerce Business Daily that a contracting office of the agency has certified interim FACNET. The notice shall establish a date after which it will be required that all responses to solicitations issued by the contracting office through FACNET, must be submitted through FACNET, unless otherwise authorized.

##### **4.505-2 Full certification.**

(a) An agency is considered to have implemented full FACNET if —

(1) The agency has implemented all of the FACNET functions described in 4.504;

(2) During the entire preceding fiscal year, more than 75 percent of the agency's eligible contracts not otherwise exempted (see 4.506), that exceeded the micro-purchase threshold, but did not exceed the simplified acquisition threshold were entered into via FACNET; and

(3) The head of the agency, with the concurrence of the Administrator of OFPP, has certified to the Congress that the agency has implemented full FACNET. For the Department of Defense, the certification shall be made by the Secretary of Defense for the Department as a whole.

(b) Eligible contracts do not include any class or classes of contracts that the Federal Acquisition Regulatory Council determines, after October 13, 1997, are not suitable for acquisition through FACNET.

#### **4.505-3 Governmentwide certification.**

The Federal Government is considered to have implemented Governmentwide FACNET if —

(a) During the preceding fiscal year, at least 75 percent of eligible contracts entered into by executive agencies that exceeded the micro-purchase threshold but did not exceed the simplified acquisition threshold were made via full FACNET; and

(b) The Administrator of OFPP has certified implementation of Governmentwide FACNET to the Congress.

#### **4.505-4 Contract actions excluded.**

For purposes of calculating the percentage of FACNET use referred to in 4.505-2 and 4.505-3, actions issued against established contracts, such as delivery orders, task orders, and in-scope modifications, shall not be included.

#### **4.506 Exemptions.**

The following contracts are exempted from the use of FACNET as specified and shall not be considered when determining compliance with the requirements to implement FACNET:

(a) Interim FACNET. (1) Classes of procurements exempted by the head of the contracting activity after a written determination is made that FACNET processing of those procurements is not cost-effective or practicable; and specific purchases for which the contracting officer determines that it is not practicable or cost effective to process via FACNET. Such determinations shall be centrally maintained at the contracting office.

(2) Contracts that do not require notice under Subpart 5.2.

(b) Full FACNET. Contracts awarded by a contracting office or a portion of a contracting office, if the office is exempted from use of FACNET by the head of the agency or the Secretary of Defense for the military departments and defense agencies. Any such exemption shall be based on a written determination that FACNET processing is not cost effective or practicable for the contracting office, or portions thereof. Determinations shall be maintained in the office of the senior procurement executive or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies..

#### **4.507 Contract actions using simplified acquisition procedures.**

Contracting officers shall refer to section 13.106 for evaluation and documentation requirements when awarding contracts using simplified acquisition procedures.

#### 4.800 Scope of subpart.

<i>Interim</i>	<i>Prior</i>
This subpart prescribes requirements for establishing, maintaining, and disposing of contract files for all contractual actions. The application of this subpart to <b>contracts awarded using the simplified acquisition</b> procedures covered by Part 13 is optional. (See also documentation requirements in <b>13.106-2</b> .)	This subpart prescribes requirements for establishing, maintaining, and disposing of contract files for all contractual actions. The application of this subpart to <del>small purchases and other</del> simplified procedures covered by Part 13 is optional. See also documentation requirements in 13.106(b). [FAC 90-24]

#### 4.804-1 Closeout by the office administering the contract.

<i>Interim</i>	<i>Prior</i>
(a) Except as provided in paragraph (c) below, time standards for closing out contract files are as follows: (1) <b>Files for contracts using simplified acquisition procedures</b> should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations. (2) Files for firm-fixed-price contracts, other than <b>those using simplified acquisition procedures</b> , should be closed within 6 months <b>after the date on</b> which the contracting officer receives evidence of physical completion. * * * * *	(a) Except as provided in paragraph (c) below, time standards for closing out contract files are as follows: (1) <del>Small purchase</del> files should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation. (2) Files for <del>all</del> firm-fixed-price contracts other than <del>small purchases</del> should be closed within 6 months <del>of the month in</del> which the contracting officer receives evidence of physical completion. * * * * *

#### 4.804-2 Closeout of the contracting office files if another office administers the contract.

<i>Interim</i>	<i>Prior</i>
(a) <b>Contract files for contracts using simplified acquisition procedures</b> should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation. * * * * *	(a) <del>Small purchase</del> files should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation. * * * * *

#### 4.805 Storage, handling and disposal of contract files.

\* \* \* \* \*

(b) \* \* \*

DOCUMENT	RETENTION PERIOD
* * * * *	* * * * *
(5) Unsuccessful offers or quotations that pertain to contracts <b>using simplified acquisition procedures.</b>	
* * * * *	
(10) Records or documents other than those in paragraphs 4.805(b)(1)-(9) of this section pertaining to contracts <b>using simplified acquisition procedures.</b>	* * * * *
* * * * *	
(11) Records or documents other than those in paragraphs 4.805(b)(1)-(10) of this section pertaining to contracts <b>not using simplified acquisition procedures.</b>	* * * * *
* * * * *	
(13) Solicited and unsolicited unsuccessful offers and quotations <b>above the simplified acquisition threshold in Part 13:</b>	* * * * *
* * * * *	

## PART 5 — PUBLICIZING CONTRACT ACTIONS

### 5.101 Methods of disseminating information.

<i>Interim</i>	<i>Prior</i>
The Commerce Business Daily (CBD) is the public notification media by which U.S. Government agencies identify proposed contract actions and contract awards. The CBD is published in five or six daily editions weekly, as necessary.	The Commerce Business Daily (CBD) is the public notification media by which U.S. Government agencies identify proposed contract actions and contract awards. The CBD is published in five or six daily editions weekly, as necessary.
(a) As required by the Small Business Act ( <b>U.S.C.</b> 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), contracting officers shall disseminate information on proposed contract actions as <b>follows—</b>	(a) As required by the Small Business Act ( <del>41 U.S.C.</del> 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), contracting officers shall disseminate information on proposed contract actions as <del>follows:</del>
(1) For <b>proposed</b> contract actions expected to exceed <b>\$25,000</b> , by synopsisizing in the Commerce Business	(1) For contract actions expected to exceed <del>the small purchase limitation</del> in 13.000, by synopsisizing in the Commerce Business Daily (CBD) (see <del>section</del> 5.201);

Daily (CBD) (see 5.201); and

(2) For proposed contract actions expected to exceed \$10,000 (\$5,000 for Defense activities), but not expected to exceed \$25,000, by displaying in a public place at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(c) and (f). **The notice shall include a statement that all responsible sources may submit a quotation which, if timely received, shall be considered by the agency.** Such information shall be posted not later than the date the solicitation is issued, and shall remain posted for at least 10 days **or** until after **quotations** have been **opened, whichever is later.** **Electronic dissemination available to the public at the contracting office may be used to satisfy the public display requirement.**

(FAR case 94-770, "Simplified Acquisition Procedures/FACNET" & FAR case 91-104, "Electronic Contracting")

(i) If solicitations are posted in lieu of a notice, various methods of satisfying the requirements of 5.207(c) and (f) may be employed. For example, the requirements for 5.207(c) and (f) may be met by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements set forth above when the exemptions at 5.202(a)(1), (5) through (9), or (11) apply, or when oral **or FACNET** solicitations are used. **The exemption from display requirements does not relieve the contracting officer from the responsibility to consider all quotations timely received from responsible sources.**

(iii) Contracting officers shall post solicitations expected to exceed \$25,000 if required by agency regulations.

(iv) **Contracting offices utilizing electronic systems for public posting shall periodically publicize the methods for accessing such information.** [FAR case 91-104, "Electronic Contracting"]

and

(2) For proposed contract actions expected to exceed \$10,000 (\$5,000 for Defense activities), but not expected to exceed \$25,000, by displaying in a public place at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(c) and (f). Such information shall be posted not later than the date the solicitation is issued and remain posted for at least 10 days ~~regardless of the date of award. Such information shall remain posted~~ until after offers have been opened.

(i) If solicitations are posted in lieu of a notice, various methods of satisfying the requirements of 5.207(c) and (f) may be employed. For example, the requirements for 5.207(c) and (f) may be met by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements set forth above when the exemptions at 5.202(a)(1), (5) through (9), or (11) apply, or when oral solicitations are used.

(iii) Contracting officers shall post solicitations expected to exceed \$25,000 if required by agency regulations.

## 5.102 Availability of solicitations.

<i>Interim</i>	<i>Prior</i>
(a) The contracting officer shall—	(a) The contracting officer shall—

(1) Maintain a reasonable number of copies of solicitations publicized in the CBD, including specifications and other pertinent information (upon request, potential sources not initially solicited shall be mailed or provided copies of solicitations, if available);

(2) Provide copies of a limited solicitation to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under Part 6;

(3) Provide copies on a “first-come-first-served” basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see 36.211); and

(4) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, upon request to small business concerns, as required by 15 U.S.C. 637(b)—

(i) A copy of the solicitation and **specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern.**

(ii) The name and telephone number of an employee of the contracting office to answer questions on the solicitation; and

(iii) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract. *[FAR case 91-104, “Electronic Contracting”]*

(1) Maintain a reasonable number of copies of solicitations publicized in the CBD, including specifications and other pertinent information (upon request, potential sources not initially solicited shall be mailed or provided copies of solicitations, if available);

(2) Provide copies of a limited solicitation to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under Part 6;

(3) Provide copies on a “first-come-first-served” basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see 36.211); and

(4) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, upon request to small business concerns, as required by 15 U.S.C. 637(b)—

(i) A copy of the solicitation and ~~specifications~~;

(ii) The name and telephone number of an employee of the contracting office to answer questions on the solicitation; and

(iii) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.



## 5.202 Exceptions.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer need not submit the notice required by 5.201 when—</p> <p>(a) The contracting officer determines that—</p> <p>(1) The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (e.g., would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;</p> <p>(2) The contract action is made under the conditions described in 6.302-2 and the Government would be seriously injured if the agency complies with the time periods specified in 5.203;</p> <p>(3) The contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government, or international organizations, has the effect of requiring that the acquisition shall be from specified sources;</p> <p>(4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act (but see 5.205(f)), or from a specific source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;</p> <p>(5) The contract action is for utility services other than telecommunications services and only one source is available;</p> <p>(6) The contract action is an order placed under a requirements contract;</p> <p>(7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);</p> <p>(8) The contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see 6.003) and publica-</p>	<p>The contracting officer need not submit the notice required by 5.201 when—</p> <p>(a) The contracting officer determines that—</p> <p>(1) The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (e.g., would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;</p> <p>(2) The contract action is made under the conditions described in 6.302-2 and the Government would be seriously injured if the agency complies with the time periods specified in 5.203;</p> <p>(3) The contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government, or international organizations, has the effect of requiring that the acquisition shall be from specified sources;</p> <p>(4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act (but see 5.205(f)), or from a specific source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;</p> <p>(5) The contract action is for utility services other than telecommunications services and only one source is available;</p> <p>(6) The contract action is an order placed under a requirements contract;</p> <p>(7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);</p> <p>(8) The contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see 6.003) and publication of any notice</p>

tion of any notice complying with 5.207 would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal. This exception does not apply if the contract action results from an unsolicited research proposal and acceptance is based solely upon the unique capability of the source to perform the particular research services proposed (see 6.302-1(a)(2)(i));

(9) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(10) The contract action is made under conditions described in 6.302-3, or 6.302-5 with regard to brand name commercial items for authorized resale, or 6.302-7, and advance notice is not appropriate or reasonable;

(11) The contract action is made under the terms of an existing contract that was previously synopsisized in sufficient detail to comply with the requirements of 5.207 with respect to the current contract action;

(12) The contract action is by a Defense agency and the contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited. This exception does not apply to contract actions subject to the Trade Agreements Act (see Subpart 25.4). This exception also does not apply to North American Free Trade Agreement contract actions, which will be synopsisized in accordance with agency regulations;

**(13) The contract action is for an amount expected to exceed \$25,000 but not expected to exceed the simplified acquisition threshold and is made by a contracting activity that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET and the contract action will be made through FACNET; or**

**(14) The contract action is for an amount at or below \$250,000 and is made through certified FACNET after Governmentwide FACNET has been certified. This exception does not apply when the contract action is not made through certified FACNET (see Subpart 4.5).**

(b) The head of the agency determines in writing,

complying with 5.207 would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal. This exception does not apply if the contract action results from an unsolicited research proposal and acceptance is based solely upon the unique capability of the source to perform the particular research services proposed (see 6.302-1(a)(2)(i));

(9) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(10) The contract action is made under conditions described in 6.302-3, or 6.302-5 with regard to brand name commercial items for authorized resale, or 6.302-7, and advance notice is not appropriate or reasonable;

(11) The contract action is made under the terms of an existing contract that was previously synopsisized in sufficient detail to comply with the requirements of 5.207 with respect to the current contract action; ~~or~~

(12) The contract action is by a Defense agency and the contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited. This exception does not apply to contract actions subject to the Trade Agreements Act (see Subpart 25.4). This exception also does not apply to North American Free Trade Agreement contract actions, which will be synopsisized in accordance with agency regulations-

(b) The head of the agency determines in writing, after

after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

### 5.203 Publicizing and response time.

<i>Interim</i>	<i>Prior</i>
<p>Whenever agencies are required to publish notice of contract actions under 5.201, they shall proceed as follows</p> <p>(a) A notice of the contract action shall be published in the CBD at least 15 days before issuance of a solicitation.</p> <p><b>(b) The contracting officer shall establish a solicitation response time which will afford potential offerors a reasonable opportunity to respond for each contract action, including actions via FACNET, in an amount estimated to be greater than \$25,000, but not greater than the simplified acquisition threshold. The contracting officer should consider the circumstances of the individual procurement, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.</b></p> <p>(c) Agencies shall allow at least a 30 <b>day</b> response time for receipt of bids or proposals from the date of issuance of a solicitation <b>if the contract action is expected to exceed the simplified acquisition threshold.</b></p> <p>(d) Agencies shall allow at least a 30 <b>day</b> response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar <b>arrangement if the contract action is expected to exceed the simplified acquisition threshold.</b></p> <p>(e) Agencies shall allow at least a 45 <b>day</b> response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for contract actions categorized as research and <b>development if the contract action is expected to exceed the simplified acquisition threshold.</b></p>	<p>Whenever agencies are required to publish notice of contract actions under 5.201, they shall proceed as follows:</p> <p>(a) A notice of the contract action shall be published in the CBD at least 15 days before issuance of a solicitation.</p> <p><del>—(b) Agencies shall allow at least 30 days' response time for receipt of bids or proposals from the date of issuance of a solicitation.</del></p> <p><del>—(c) Agencies shall allow at least 30 days' response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement.</del></p> <p><del>(d) Agencies shall allow at least 45 days' response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for contract actions categorized as research and development.</del></p>

(f) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(g) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted) following transmittal of the synopsis to the CBD. This presumption is based on the CBD's confirmation that publication does occur within these time frames. This presumption does not negate the mandatory waiting or response times specified in paragraphs (a) through (d) of this section. Upon learning that a particular notice has not in fact been published within the presumed timeframes, contracting officers should consider whether the date for receipt of offers can be extended or whether circumstances have become sufficiently compelling to justify proceeding with the contract action under the authority of 5.202(a)(2).

(e) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(f) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted) following transmittal of the synopsis to the CBD. This presumption is based on the CBD's confirmation that publication does occur within these time frames. This presumption does not negate the mandatory waiting or response times specified in paragraphs (a) through (d) of this section. Upon learning that a particular notice has not in fact been published within the presumed timeframes, contracting officers should consider whether the date for receipt of offers can be extended or whether circumstances have become sufficiently compelling to justify proceeding with the contract action under the authority of 5.202(a)(2).

## 5.205 Special situations.

<i>Interim</i>	<i>Prior</i>
<p>* * * * *</p> <p>(d) <i>Architect-engineering services.</i> Contracting officers shall publish notices of intent to contract for architect-engineering services as follows:</p> <p>(1) Except when exempted by 5.202, <b>contracting officers shall</b> synopsise each proposed contract action for which the total fee (including phases and options) is expected to exceed <b>\$25,000</b>. Reference shall be made to the appropriate CBD Numbered Note.</p> <p>* * * * *</p>	<p>* * * * *</p> <p>(d) <i>Architect-engineering services.</i> Contracting officers shall publish notices of intent to contract for architect-engineering services as follows:</p> <p>(1) Except when exempted by 5.202, synopsise each proposed contract action for which the total fee (including phases and options) is expected to exceed <del>the small purchase limitation in 13,000-</del> Reference shall be made to the appropriate CBD Numbered Note.</p> <p>* * * * *</p>

## 5.207 Preparation and transmittal of synopses.

<i>Interim</i>	<i>Prior</i>
<p>(a) <i>Transmittal.</i> Contracting officers shall transmit synopses of actions identified under 5.101 to the Commerce Business Daily by the most expeditious and reliable means available.</p> <p>(1) <i>Electronic transmission.</i> All synopses transmitted by electronic means shall be in ASCII Code. Contact your agency's communications center for the appropriate transmission instructions or services.</p> <p>(2) <i>Hard copy transmission.</i> When electronic transmission is not feasible, synopses should be sent to the CBD via mail or other physical delivery of hard</p>	<p>(a) <i>Transmittal.</i> Contracting officers shall transmit synopses of actions identified under 5.101 to the Commerce Business Daily by the most expeditious and reliable means available.</p> <p>(1) <i>Electronic transmission.</i> All synopses transmitted by electronic means shall be in ASCII Code. Contact your agency's communications center for the appropriate transmission instructions or services.</p> <p>(2) <i>Hard copy transmission.</i> When electronic transmission is not feasible, synopses should be sent to the CBD via mail or other physical delivery of hard</p>

copy and should be addressed to:

U.S. Department of Commerce  
Commerce Business Daily  
P.O. Box 5999  
Chicago, IL 60680

(b) *Format.* The contracting officer shall prepare the synopsis in the following style and format to assure timely processing of the synopsis by the Commerce Business Daily.

\* \* \* \* \*

(c) *General format for Item 17, "Description."*

(1) Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested.

(2) Do not include In Item 17 the CBD supply or service classification code from Item 6.

(i) National Stock Number (NSN) if assigned.

(ii) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see Subpart 9.2).

(iii) Manufacturer, including part number, drawing number, etc.

(iv) Size, dimensions, or other form, fit or functional description.

(v) Predominant material of manufacture.

(vi) Quantity, including any options for additional quantities.

(vii) Unit of issue.

(viii) Destination information.

(ix) Delivery schedule.

(x) Duration of the contract period.

**(xi) For a contract action in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold, enter (A) a description of the procedures to be used in awarding the contract (e.g., request for oral or written quotation or solicitation), and (B) the anticipated award date.**

**(xii)** For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation

copy and should be addressed to:

U.S. Department of Commerce  
Commerce Business Daily  
P.O. Box 5999  
Chicago, IL 60680

(b) *Format.* The contracting officer shall prepare the synopsis in the following style and format to assure timely processing of the synopsis by the Commerce Business Daily.

\* \* \* \* \*

(c) *General format for Item 17, "Description."*

(1) Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested.

(2) Do not include In Item 17 the CBD supply or service classification code from Item 6.

(i) National Stock Number (NSN) if assigned.

(ii) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see Subpart 9.2).

(iii) Manufacturer, including part number, drawing number, etc.

(iv) Size, dimensions, or other form, fit or functional description.

(v) Predominant material of manufacture.

(vi) Quantity, including any options for additional quantities.

(vii) Unit of issue.

(viii) Destination information.

(ix) Delivery schedule.

(x) Duration of the contract period.

~~(xi)~~ For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation

factors.

(**xiii**) Numbered notes (see 5.207(e)), including instructions for set-asides for small businesses and labor surplus area concerns.

(**xiv**) In the case of **noncompetitive contract actions**, insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see 5.207(e)(3)).

(**xv**) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(**xvi**) If the contracting office will accept requests for solicitations through alternate means (e.g., facsimile machine, Telex), provide the machine number and routing instructions.

**xvii. If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.**

[FAR case 91-104, "Electronic Contracting"]

factors.

(~~xii~~) Numbered notes (see 5.207(e)), including instructions for set-asides for small businesses and labor surplus area concerns.

(~~xiii~~) In the case of ~~contract actions under Subpart 6.3~~, insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see 5.207(e)(3)).

(~~xiv~~) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(~~xv~~) If the contracting office will accept requests for solicitations through alternate means (e.g., facsimile machine, Telex), provide the machine number and routing instructions.

## 5.301 General.

<i>Interim</i>	<i>Prior</i>
<p>(a) Except for contract actions described in paragraph (b) of this section, contracting officers shall synopsize in the Commerce Business Daily (CBD) awards exceeding \$25,000 that (1) are subject to the Trade Agreements Act (see 25.402 and 25.403), or (2) are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.</p> <p>(b) A notice is not required under paragraph (a) of this section if—</p> <p>(1) The notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;</p> <p>(2) The award results from acceptance of an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would disclose the originality of thought or innovativeness of the proposed research or would disclose proprietary information associated with the proposal;</p>	<p>(a) Except for contract actions described in paragraph (b) of this section, contracting officers shall synopsize in the Commerce Business Daily (CBD) awards exceeding \$25,000 that (1) are subject to the Trade Agreements Act (see 25.402 and 25.403), or (2) are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.</p> <p>(b) A notice is not required under paragraph (a) of this section if—</p> <p>(1) The notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;</p> <p>(2) The award results from acceptance of an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would disclose the originality of thought or innovativeness of the proposed research or would disclose proprietary information associated with the proposal;</p>

<p>(3) The award results from a proposal submitted under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);</p> <p>(4) The contract action is an order placed under a requirements contract;</p> <p>(5) The award is made for perishable subsistence supplies;</p> <p>(6) The award is for utility services, other than telecommunications services, and only one source is <b>available; or</b></p> <p><b>(7) The contract action is for an amount greater than \$25,000 but not greater than the simplified acquisition threshold, the contract action is made by a contracting office that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET, and the contract action has been made through FACNET.</b></p>	<p>(3) The award results from a proposal submitted under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);</p> <p>(4) The contract action is an order placed under a requirements contract;</p> <p>(5) The award is made for perishable subsistence supplies; <del>or</del></p> <p>(6) The award is for utility services, other than telecommunications services, and only one source is <del>available.</del></p>
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### 5.303 Announcement of contract awards.

<i>Interim</i>	<i>Prior</i>
<p>* * * * *</p> <p>(b) <i>Local announcement.</i> Agencies may also release information on contract awards to the local press or other media. When local announcements are made for contract awards in excess of the <b>simplified acquisition threshold</b> in <b>Part 13</b>, they shall include—</p> <p>* * * * *</p>	<p>* * * * *</p> <p>(b) <i>Local announcement.</i> Agencies may also release information on contract awards to the local press or other media. When local announcements are made for contract awards in excess of the <del>small purchase limitation in 13.000</del>, they shall include—</p> <p>* * * * *</p>

### 5.503 Procedures.

<i>Interim</i>	<i>Prior</i>
<p>* * * * *</p> <p>(c) <i>Forms.</i> (1) When contracting directly with the media for advertising, contracting officers—</p> <p>(i) Shall use Standard Form 26, Award/Contract, or Standard Form 1447, Solicitation/Contract, when the dollar amount of the acquisition exceeds the <b>simpli-</b></p>	<p>* * * * *</p> <p>(c) <i>Forms.</i> (1) When contracting directly with the media for advertising, contracting officers shall—</p> <p>(i) Use Standard Form 26, Award/Contract, or Standard Form 1447, Solicitation/Contract, when the dollar amount of the acquisition exceeds the <del>small purchase dollar limitations (see 13.000)</del>; or</p>

<p><b>fied acquisition threshold; or</b></p> <p>(ii) May use Optional Form 347, Order for Supplies or Services, or an approved agency form, when the dollar amount of the acquisition does not exceed <b>the threshold for use of simplified acquisition procedures</b> (see <b>Part 13</b>).</p> <p>* * * * *</p>	<p>(ii) Use Optional Form 347, Order for Supplies or Services, or an approved agency form, when the dollar amount of the acquisition does not exceed the <del>small-purchase dollar limitations</del> (see <del>13.000</del>).</p> <p>* * * * *</p>
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## PART 6 — COMPETITION REQUIREMENTS

### 6.001 Applicability.

<i>Interim</i>	<i>Prior</i>
<p>This part applies to all acquisitions except—</p> <p>(a) Contracts awarded using the <b>simplified acquisition</b> procedures of Part 13;</p> <p>* * * * *</p>	<p>This part applies to all acquisitions except—</p> <p>(a) Contracts awarded using the <del>small-purchase</del> procedures of Part 13;</p> <p>* * * * *</p>



## PART 8 — REQUIRED SOURCES OF SUPPLIES AND SERVICES

### 8.203-1 Contract clause and solicitation provision.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, in solicitations and contracts that may involve items (or any subassembly, component, or part of such items) in the Federal supply classes and groups listed in paragraph (b) below, except for—</p> <p>(1) <b>Contract actions not exceeding the simplified acquisition threshold in Part 13;</b></p> <p>* * * * *</p>	<p>(a) The contracting officer shall insert the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, in solicitations and contracts that may involve items (or any subassembly, component, or part of such items) in the Federal supply classes and groups listed in paragraph (b) below, except for—</p> <p>(1) <del>Small purchase under Part 13;</del></p> <p>* * * * *</p>

### 8.404 Using schedules.

<i>Interim</i>	<i>Prior</i>
<p>(a) The planning, solicitation, and award phases of Federal Supply Schedules comply with FAR requirements. <b>When placing orders under a Federal Supply Schedule, ordering activities need not seek further competition, synopsise the requirement, make a separate determination of fair and reasonable pricing, or consider small business set-asides in accordance with 19.502.</b></p> <p>(b) Before soliciting commercial sources, executive agencies shall determine if the required supplies or services, or similar supplies or services fulfilling the same purpose, are available from schedules (see FPMR 101-26.4). If so, the ordering office shall proceed in accordance with the procedure of 8.404-1 or 8.404-2, as appropriate.</p> <p>(c) In the case of mandatory schedules, ordering offices shall not (1) solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to Federal Supply Schedules; or (2) request formal or informal quotations from Federal Supply Schedule contractors for the purpose of price comparisons.</p>	<p>(a) The planning, solicitation, and award phases of Federal Supply Schedules comply with FAR requirements. <del>Consequently, contracting officers need not seek further competition, synopsise the solicitation or award, determine fair and reasonable pricing, or consider small business small purchase set-aside procedures when placing an order under a Federal Supply Schedule.</del></p> <p>(b) Before soliciting commercial sources, executive agencies shall determine if the required supplies or services, or similar supplies or services fulfilling the same purpose, are available from schedules (see FPMR 101-26.4). If so, the ordering office shall proceed in accordance with the procedure of 8.404-1 or 8.404-2, as appropriate.</p> <p>(c) In the case of mandatory schedules, ordering offices shall not (1) solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to Federal Supply Schedules; or (2) request formal or informal quotations from Federal Supply Schedule contractors for the purpose of price comparisons.</p>

## PART 9 — CONTRACTOR QUALIFICATIONS

## 9.405-2 Restrictions on subcontracting.

<i>Interim</i>	<i>Prior</i>
<p>(a) When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent (see Subpart 44.2), contracting officers shall not consent to subcontracts with such contractors unless the agency head or a designee states in writing the compelling reasons for this approval action. (See 9.405(b) concerning declarations of ineligibility affecting subcontracting.) [FAC 90-23]</p> <p>(b) The Government suspends or debars contractors to protect the Government's interests. Contractors shall not enter into any subcontract in excess of <b>\$25,000</b> with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. * * *</p> <p>* * * * *</p>	<p>(a) When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent (see Subpart 44.2), contracting officers shall not consent to subcontracts with such contractors unless the agency head or a designee states in writing the compelling reasons for this approval action. (See 9.405(b) concerning declarations of ineligibility affecting subcontracting.) [FAC 90-23]</p> <p>(b) The Government suspends or debars contractors to protect the Government's interests. Contractors shall not enter into any subcontract <del>equal to or</del> in excess of <del>the small purchase limitation at 13,000</del> with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. * * *</p> <p>* * * * *</p>

## 9.409 Solicitation provision and contract clause.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations where the contract value is expected to exceed <b>the simplified acquisition threshold</b>.</p> <p>(b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds \$25,000.</p>	<p>(a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations where the contract value is expected to exceed \$25,000.</p> <p>(b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds \$25,000.</p>

## 9.507-1 Solicitation provisions.

<i>Interim</i>	<i>Prior</i>
<p>* * * * *</p> <p>(c) The contracting officer shall insert the provision at 52.209-8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract is expected to exceed <b>the simplified acquisition threshold</b>.</p> <p>* * * * *</p>	<p>* * * * *</p> <p>(c) The contracting officer shall insert the provision at 52.209-8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract amount is expected to exceed <del>\$25,000</del>.</p> <p>* * * * *</p>

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## PART 13 — SIMPLIFIED ACQUISITION PROCEDURES

### 13.000 Scope of part.

<i>Interim</i>	<i>Prior</i>
This part prescribes policies and procedures for the acquisition of supplies <b>and</b> services, <b>including</b> construction <b>and research and development</b> , the aggregate amount of which does not exceed <b>the simplified acquisition threshold (see 13.103(b)). See 36.602-5 for simplified procedures to be used when acquiring architect-engineering services.</b>	This part prescribes policies and procedures for the acquisition of <del>supplies, services, and construction from commercial sources</del> , the aggregate amount of which does not exceed \$25,000.

### 13.101 Definitions.

<i>Interim</i>	<i>Prior</i>
<p>"Bulk funding" means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligation authority on each purchase document</p> <p>"Delivery <b>order</b>" means an order for supplies or services placed against an established contract or with Government sources of supply.</p> <p><b>"Governmentwide commercial purchase card" means a purchase card, similar in nature to a commercial credit card, issued to authorized agency officials for their use in acquiring supplies and services. [FAC 90-24]</b></p> <p><b>Imprest fund" means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.</b></p>	<p>"Bulk funding" means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.</p> <p>"Delivery Order," as used in this part, means an order for supplies or services placed against an established contract or with Government sources of supply.</p>

**“Micro-purchase” means an acquisition of supplies or services (except construction), the aggregate amount of which does not exceed \$2,500. Micro-purchases for construction are limited to \$2,000. [FAC 90-24]**

**“Purchase order” means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.**

**“Simplified acquisition procedures” means the methods prescribed in this part for making purchases of supplies or services using imprest funds, purchase orders, blanket purchase agreements, Governmentwide commercial purchase cards, Federal Acquisition Computer Network or any other appropriate authorized method.**

**“Simplified acquisition threshold” means \$100,000 (but see 13.103(b)). In the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means \$200,000.**

~~“Purchase Order,” as used in this part, means an offer by the Government to buy certain supplies or services and construction from commercial sources, upon specified terms and conditions, the aggregate amount of which does not exceed the small purchase limit. The Optional Form 347, Order for Supplies or Services, is designed for this purpose.~~

~~“Small purchase procedures” means the methods prescribed in this part for making small purchases using imprest funds, purchase orders, and blanket purchase agreements. The term excludes—~~  
~~—(a) Requirements obtained through the use of Delivery Orders;~~  
~~—(b) Contracts with the Small Business Administration (SBA) under Section 8(a) of the Small Business Act (see Part 19); and~~  
~~—(c) Contracts awarded through (1) sealed bidding (see Part 14), (2) the negotiation procedures in Part 15, or (3) small business or labor surplus area set-asides (see Parts 19 and 20), other than small business-small purchase set-asides prescribed in 13.105.~~

~~\* \* \* \* \*~~

~~13.104(f) This part does not preclude using (1) Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)) or (2) negotiated two-party contracts (see Part 15), for acquisitions not exceeding the small purchase limitation.~~

~~“Small purchase” means an acquisition of supplies, services, and construction in the amount of \$25,000 or less using the procedures prescribed in this part.~~

## 13.102 Purpose.

<i>Interim</i>	<i>Prior</i>
The purpose of this part is to prescribe simplified <b>acquisition</b> procedures in order to— <b>(a) Reduce</b> administrative costs; <b>(b) Improve</b> opportunities for small business and small disadvantaged business concerns to obtain a fair proportion of Government <b>con-</b>	The purpose of this part is to prescribe simplified procedures for small purchases in order to <del>(1) reduce</del> administrative costs and <del>(2) improve</del> opportunities for small business <del>concerns</del> and small disadvantaged business concerns to obtain a fair proportion of Government <del>contracts.</del>

tracts; (c) Promote efficiency and economy in contracting; and, (d) Avoid unnecessary burdens for agencies and contractors.	
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### 13.103 Policy.

<i>Interim</i>	<i>Prior</i>
<p>(a) <b>Simplified acquisition</b> procedures shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the <b>simplified acquisition threshold</b> unless requirements can be met by using required sources of supply <b>under Part 8 (e.g., Federal Prison Industries, Committee for Purchase from People who are Blind or Severely Disabled, and Federal Supply Schedule contracts) or orders under Federal Information Processing multiple award schedule contracts.</b></p>	<p>(a) <del>The procedures prescribed in this part</del> shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the <del>small purchase limitation</del> unless requirements can be met by using required sources of supply <del>(see Part 8).</del></p>

**(b) Simplified acquisition procedures may not be used for contract actions exceeding \$50,000, and not exceeding the simplified acquisition threshold, unless the contracting office making the purchase has been certified as having interim FACNET in accordance with 4.505-1. The contracting office shall not use simplified acquisition procedures for contract actions exceeding \$50,000 after December 31, 1999, unless the office's cognizant agency has certified full FACNET capability in accordance with 4.505-2.**

**(c) Simplified acquisition** procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the **simplified acquisition threshold** even though resulting awards do not exceed that **threshold**. Requirements aggregating more than the **simplified acquisition threshold** shall not be broken down into several purchases that are less than the **threshold** merely to permit **use of simplified acquisition** procedures.

**(d) Simplified acquisition procedures** may be used to acquire personal services if the agency has specific statutory authority to acquire personal services (see 37.104).

**(e) FACNET is the preferred means for acquiring supplies and services, including construction and research and development, in amounts exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold.**

**(f) Contracting officers shall establish deadlines for the submission of responses to solicitations which afford contractors a reasonable opportunity to respond.**

**(g) Contracting officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of this part. For example, the procedures of other FAR parts may, as appropriate, be adapted for use in awarding contracts under this part. Other FAR parts that may be adapted include, but are not limited to—**

~~(b) Small-purchase~~ procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the ~~small-purchase limitation~~ even though resulting awards do not exceed that ~~limit~~. Requirements aggregating more than the ~~small-purchase-dollar limitation~~ shall not be broken down into several purchases that are less than the ~~limit~~ merely to permit ~~negotiation under small-purchase~~ procedures.

~~(e) Small-purchase~~ procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services ~~by contract~~ (see 37.104).

- (1) Part 14, Sealed Bidding;
- (2) Part 15, Contracting by Negotiation;
- (3) Part 11, Acquisition and Distribution of Commercial products; and
- (4) Part 36, Construction and Architect-Engineer Contracts, including the use if Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)).

### 13.104 Procedures.

<i>Interim</i>	<i>Prior</i>
<p>(a) Contracting officers shall <b>make awards under this part in the simplified manner</b> that is most suitable, efficient, and economical in the circumstances of each acquisition. Contracting officers may use the procedures in this part in acquisitions from Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.</p> <p>(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or-none" basis if suppliers are so advised when quotations are requested.</p> <p>(c) Agencies shall use bulk funding to the maximum extent practicable to reduce processing time, handling, and documentation. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.</p> <p>(d) Agencies shall inspect items or services acquired under <b>simplified acquisition procedures</b> as prescribed in 46.404.</p> <p>(e) Agencies shall use United States-owned foreign currency, if appropriate, in making payments <b>when using simplified acquisition procedures</b> (see Subpart 25.3) .</p> <p>(f) For proposed purchases covered by this part, see <b>5.101</b> for public display <b>and synopsis</b> requirements.</p> <p>(g) When a quotation, oral or written, is to be rejected</p>	<p>(a) Contracting officers <del>shall use the small purchase procedure</del> that is most suitable, efficient, and economical in the circumstances of each acquisition. Contracting officers may use the procedures in this part in acquisitions from Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.</p> <p>(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or-none" basis if suppliers are so advised when quotations are requested.</p> <p>(c) Agencies shall use bulk funding to the maximum extent practicable to reduce processing time, handling, and documentation. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.</p> <p>(d) Agencies shall inspect items or services acquired under <del>small purchase</del> procedures as prescribed in 46.404.</p> <p>(e) Agencies shall use United States-owned foreign currency, if appropriate, in making payments <del>for small purchases</del> (see Subpart 25.3).</p> <p><del>{(f) See Interim 13.101}</del></p> <p><del>-(g)</del> For proposed purchases covered by this part, see <del>5.101(a)(2)</del> for public display requirements.</p> <p><del>-(h)</del> When a quotation, oral or written, is to be rejected</p>

because a small business firm is determined to be **non-responsible** (see Subpart 9.1), see **Subpart 19.6** with respect to **certificates of competency**.

because a small business firm is determined to be ~~not responsible~~ (see Subpart 9.1), see 19.6 with respect to ~~Certificates of Competency~~.

### 13.105 Small business set-asides.

<i>Interim</i>	<i>Prior</i>
<p>(a) Except as provided in paragraphs <b>(b) and (c)</b> of this section, each acquisition <b>(non-FACNET and FACNET)</b> of supplies or services that has an anticipated dollar value exceeding <b>\$2,500 and not exceeding \$100,000, is reserved exclusively for small business concerns and shall be set aside (see Subpart 19.5).</b></p> <p>(b) The requirements of this section apply only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see <b>19.000</b>). Foreign concerns shall not be solicited <b>for</b> acquisitions <b>set aside</b> for small business concerns.</p> <p>(c)(1) Each written solicitation under a set-aside shall contain the <b>appropriate provisions or clauses prescribed by Part 19</b>. If the solicitation is oral, however, information substantially identical to that which is in the provision <b>or clause</b> shall be given to potential quoters.</p> <p>(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business set-aside and may purchase on an unrestricted basis. If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with the small business set-aside, the SBA procurement center representative may appeal the deci-</p>	<p>(a) Except as provided in paragraphs <del>(b), (c), and (d)</del>, of this section, each acquisition of supplies or services that has an anticipated dollar value exceeding <del>\$2,500, but not exceeding \$25,000, and is subject to small purchase procedures,</del> shall be reserved exclusively for small business concerns. <del>This shall be accomplished by using the category of set-asides established by Pub. L. 95-507, specifically for small purchases, identified as small business—small purchase set-asides established by Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) (see Pub. L. 95-507).</del> [FAC 90-24]</p> <p>(b) The requirements of this section <del>13.105</del> apply only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see <del>19.000(b)</del>). Foreign concerns shall not be solicited <del>or awarded</del> acquisitions reserved for small business concerns.</p> <p><del>(c) The requirement for small business-small purchase set-asides does not affect the responsibility of agencies to make purchases from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely Handicapped, and Federal Supply Schedule contracts. [FAC 90-21]</del></p> <p><del>13.105-(d)</del> (1) Each written solicitation under a <del>small business-small purchase</del> set-aside shall contain the <del>provision at 52.219-4, Notice of Small Business-Small Purchase Set-Aside</del>. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.</p> <p><del>13.105-(d)</del> (2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns <del>(or at least one if the purchase does not exceed the dollar threshold, prescribed in 13.106, for obtaining competition and price reasonableness)</del> that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business-small purchase set-aside and may purchase on an unrestricted basis. If the SBA procurement center</p>



sion in accordance with the procedures set forth in 19.505.

(3) If the contracting officer proceeds with the set-aside and receives a quotation from only one responsible small business concern at a reasonable price (see **13.106-2(a)**), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the set-aside and complete the purchase on an unrestricted basis.

(4) If the purchase is on an unrestricted basis under **13.105(c)(2)**, the contracting officer shall document in the file the reason for the unrestricted purchase.

**(5) See Part 19 for policy concerning—**

- (i) Contracting with the Small Business Administration under the 8(a) Program (Subpart 19.8);**
- (ii) Emerging small business set-aside (19.1006(c)); and**
- (iii) The Small Business Competitiveness Demonstration Program (Subpart 19.10).**

representative disagrees with a contracting officer's decision not to proceed with a small business-small purchase set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in 19.505.

~~13.105-(d)~~ (3) If the contracting officer proceeds with the ~~small business-small purchase~~ set-aside and receives a quotation from only one responsible small business concern at a reasonable price (see ~~13.106(e)~~), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the ~~small business-small purchase~~ set-aside and complete the purchase on an unrestricted basis.

~~13.105-(d) (4) When proceeding under 13.105(d)(1) or (3), the contracting officer shall ascertain the availability of small business suppliers by telephone or other informal means (see 13.106(b)(4)).~~

~~13.105-(d) (5) If the purchase is on an unrestricted basis under 13.105(d)(2), the contracting officer shall document in the file the reason for the unrestricted purchase.~~

~~(e) Policy concerning nonmanufacturers under small business-small purchase set-asides is prescribed in 19.501(f)(2).~~

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**13.106 Purchases exceeding the micro-purchase threshold.**

**13.106-1 Soliciting competition, evaluation of quotes, and award. (a) *Soliciting Competition.***

<i>Interim</i>	<i>Prior</i>
(1) Contracting officers shall solicit a reasonable num-	<del>13.106(a)</del> Purchases over 10 percent of the small

ber of sources to promote competition to the maximum extent **practicable, and to** ensure that the purchase is advantageous to the Government, **based, as appropriate, on either price alone or** price and other factors (e.g., **past performance and quality**) including the administrative cost of the purchase. **Requests for quotations or solicitations shall notify suppliers of the basis upon which award is to be made.**

(2) **FACNET is the preferred method of soliciting simplified acquisitions. However, if FACNET is not available, or if the contracting officer has made a determination that it is not practicable or cost-effective to process a specific purchase via FACNET, or if the head of the contracting activity has made a determination that it is not practicable or cost-effective to process a class of purchases via FACNET (see 4.506), quotations may be solicited through other appropriate means. Requests for quotations should be solicited orally to the maximum extent practicable for contract actions not expected to exceed \$25,000, when FACNET is not available or a determination has been made that it is not practicable or cost effective to purchase via FACNET. Oral solicitations may not be practicable for most contract actions exceeding \$25,000 because of the synopsis requirement in 5.101. A synopsis may incorporate enough information for the contracting officer to receive oral quotes. The contracting officer is not required to issue a separate written solicitation. Paper solicitations for contract actions not expected to exceed \$25,000 should only be issued when obtaining electronic or oral quotations is not considered economical or practical. Solicitations for construction contracts over \$2,000 shall only be issued electronically or by paper solicitation.**

(3) **When not soliciting quotations electronically, maximum** practicable competition ordinarily can be obtained without soliciting quotations **or offers** from sources outside the **local trade area.**

Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable **if the contract action does not exceed \$25,000.** If practicable, two sources not in-

~~purchase limitation.~~ (1) Contracting officers shall solicit ~~quotations from~~ a reasonable number of sources to promote competition to the maximum extent ~~practicable and~~ ensure that the purchase is advantageous to the Government, price and other factors ~~considered~~, including the administrative cost of the purchase.

~~13.106(a)(2) Generally, quotations should be solicited orally except that written solicitations shall be used for construction contracts over \$2,000. Written solicitations should be used when obtaining oral quotations is not considered economical or practical.~~

~~13.106(a)(3) Maximum practicable competition for small purchases ordinarily can be obtained without soliciting quotations from sources outside the trade area in which the purchasing office is located.~~

~~13.106(a)(5) Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable. If practicable, two sources not included in the previous solicitation should be re-~~

cluded in the previous solicitation should be requested to furnish quotations.

The following factors influence the number of quotations required in connection with any particular purchase:

- (i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.
- (ii) Information obtained in making recent purchases of the same or similar item.
- (iii) The urgency of the proposed purchase.
- (iv) The dollar value of the proposed purchase.
- (v) Past experience concerning specific dealers' prices.

**(4) Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source to be reasonably available (e.g., urgency).**

**(5)** Contracting officers shall not limit solicitations to suppliers of well known and widely distributed makes or brands, **or solicit** quotations on a personal preference basis. **If it is necessary to maintain a list of sources, new** supply sources disclosed through trade journals or other **media** shall be continuously reviewed and, if appropriate, added to the **list**.

**(6)** In accordance with 14.408-3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

**(7)(i)** Unless exempted from this requirement by the head of the contracting activity, **or unless purchases are made through FACNET**, each contracting office should maintain a source list (or lists, if more convenient) and should record on the list the status of each source (when the status is made known to the contracting office) in the following categories:

- (A) Small business.
- (B) Small disadvantaged business.
- (C) **Women-owned small business.**

(ii) The status information **should** be used to ensure that small business concerns are given opportunities to **respond to solicitations issued using simplified acquisition procedures.**

requested to furnish quotations.

~~13.106(a)(6)~~ The following factors influence the number of quotations required in connection with any particular purchase:

- (i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.
- (ii) Information obtained in making recent purchases of the same or similar item.
- (iii) The urgency of the proposed purchase.
- (iv) The dollar value of the proposed purchase.
- (v) Past experience concerning specific dealers' prices.

~~13.106(a) Purchases over 10 percent of the small purchase limitation. (1) ... Solicitations may only be limited to one source if the contracting officer determines that only one source is reasonably available.~~

~~13.106(a)(3) ... Contracting officers shall not limit solicitations to suppliers of well known and widely distributed makes or brands, nor shall quotations be solicited on a personal preference basis. New supply sources, disclosed through trade journals or other media, shall be continuously reviewed and, if appropriate, added to the list of available sources.~~

~~13.107(b) Discounts. Consistent with the applicable principles in 14.407-3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.~~

~~13.106(a)(4)(i)~~ Unless exempted from this requirement by the head of the contracting activity, each contracting office shall maintain a ~~small purchase~~ source list (or lists, if more convenient) and shall record on the list the status of each source (when the status is made known to the contracting office) in the following categories:

- (A) Small business.
- (B) Small disadvantaged business.
- (C) ~~Certified in a labor surplus area.~~

(ii) The status information ~~shall~~ be used to ensure that small business concerns are given opportunities to ~~submit quotations in response to small purchase solicitations. The names of additional concerns may be obtained from the Small and Disadvantaged Business Utilization Specialist who, in turn, may request support from the SBA Procurement Center Representative or~~

other Federal and private sources which maintain lists of small business concerns. (See Subpart 19.1 for pertinent definitions.)

### 13.106-1 Soliciting competition, evaluation of quotes, and award. (b) *Evaluation of Quotes or Offers.*

<i>Interim</i>	<i>Prior</i>
<p>(1) Contracting officers may evaluate quotations or offers based on price alone or price and other factors (e.g., past performance, or quality). Formal evaluation plans, conduct of discussions, and scoring of quotes or offers are not required. Evaluation of other factors does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge, previous experience, or customer surveys.</p> <p>(2) <b>Standing</b> price quotations may be used in lieu of obtaining individual quotations each time a purchase is contemplated. <b>In such case, the</b> buyer shall ensure that the price information is current and that the Government obtains the benefit of maximum <b>discounts before award is made.</b></p> <p>(3) Contracting officers shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination.</p> <p>(4) Contracting officers shall comply with the <b>policy in 7.202 relating to economic purchase quantities, when practicable.</b></p>	<p><del>13.106(a)(7) If suppliers furnish standing price quotations on supplies or services required on an intermittent and recurring basis, the information may be used in lieu of obtaining individual quotations each time a purchase is contemplated. The buyer shall ensure that the price information is current and that the Government obtains the benefit of maximum discounts.</del></p> <p><del>13.107(e) <i>Transportation charges.</i> Contracting officers shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination.</del></p> <p><del>13.107 (d) <i>Economic purchase quantities (supplies).</i> Contracting officers shall comply with the economic purchase quantity planning requirements for supplies in Subpart 7.2. If quotations are solicited in writing, contracting officers shall comply with 7.203 and 7.204. If quotations are solicited orally, contracting officers shall orally request the information covered by the provision at 52.207-4 in accordance with the instructions at 7.203 and then comply with 7.204.</del></p>

### 13.106-1 Soliciting competition, evaluation of quotes, and award. (c) *Award.*

<i>Interim</i>	<i>Prior</i>
<p>(1) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the</p>	<p><del>13.106(a)(8) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price</del></p>

quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation and **ask** it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) Notification to unsuccessful suppliers shall be given only if requested. **When a supplier requests information on an award which was based on factors other than price alone, the notification shall include a brief explanation of the basis for the contract award decision.**

for the quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation and ~~request~~ it to confirm or alter its requirement. The file shall be documented to support the final action taken.

~~13.106(a)(9)~~ Notification to unsuccessful suppliers shall be given only if requested.

## 13.106-2 Data to support purchases.

<i>Interim</i>	<i>Prior</i>
<p>(a) The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased or any other reasonable basis.</p> <p>(b) <b>When other than price related factors are considered in selecting the supplier (see 13.106-1(b)(1)), the contracting officer shall document the file to support the final contract award decision.</b></p> <p>(c) If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source or of educational services from non-profit institutions.</p> <p>(d) <b>Simplified documentation practices should be used.</b> The following illustrate the extent to which quotation information should be recorded.</p> <p>(1) <i>Oral solicitations.</i> The contracting office should establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.</p> <p>(2) <i>Written solicitations (see 2.101).</i> Written records of solicitations may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the <b>supplier</b> or <b>suppliers</b> contacted, and other pertinent data.</p> <p>(e) Purchasing offices shall retain data supporting</p>	<p><del>13.105(b) Data to support small purchases over 10 percent of the small purchase limitation.</del> (1) The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased, or any other reasonable basis. <del>In any case, the contracting officer should gain as much knowledge as practicable of the physical and material characteristics and intended use of the item to be purchased as an aid to determine price reasonableness.</del></p> <p><del>13.105(b)(2)</del> If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source or of educational services from nonprofit institutions.</p> <p><del>13.105(b)(3)</del> The following illustrate the extent to which quotation information should be recorded:</p> <p>(i) <i>Oral solicitations.</i> The contracting office shall establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each. <del>Hand-written notations on the purchase requisition are satisfactory for this purpose.</del></p> <p>(ii) <del>Written solicitations.</del> Written records of solicitations may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the <del>vendor</del> or <del>vendors</del> contacted, and other pertinent data.</p> <p><del>13.105(b)(4)</del> Purchasing offices shall retain data sup-</p>

purchases **using simplified acquisition procedures** to the minimum extent and duration necessary for management review **purposes (see Subpart 4.8).**

porting ~~small~~ purchases to the minimum extent and duration necessary for management review ~~purposes. (See Subpart 4.8, Contract Files.)~~

### 13.107 Solicitation forms.

<i>Interim</i>	<i>Prior</i>
<p>(a) Except when quotations are solicited <b>via FACNET or</b> orally, Standard Form 18, Request for Quotations (53.301-18), is <b>available, but not required</b>, for use by all agencies.</p> <p>(b) Optional Form 336, Continuation Sheet, may be used with Standard Form 18 when additional space is needed.</p> <p>(c) If Standard Form 18 is not used for written solicitations, contracting officers may request quotations using an agency-designed form, an agency-approved automated format, or <b>electronically</b>.</p> <p>(d) Each agency-designed request for quotations form shall conform with Standard Form 18, <b>to the maximum extent practicable</b>.</p> <p>(e) When using <b>an unsigned electronic purchase order (see 13.506)</b> for transmission of a request for quotations, the provisions and clauses applicable to the solicitation shall be incorporated by reference.</p>	<p><del>13.107(a) Forms. (1) Except when quotations are solicited orally, Standard Form 18, Request for Quotations (illustrated in 53.301-18), is designed for use in obtaining price, delivery, and related information from suppliers. (2) Standard Form 18 is available for use by all agencies, and shall be used when using the form is considered economical and efficient for obtaining written quotations for small purchases.</del></p> <p>13.107(a)(3) Optional Form 336, Continuation Sheet, may be used with Standard Form 18 when additional space is needed.</p> <p><del>13.107(a)(4) If Standard Form 18 is not used for written solicitations, contracting officers may request quotations using an agency-designed form, an agency-approved automated format, or teletype.</del></p> <p>13.107(a)(5) Each agency-designed request for quotations form shall conform with Standard Form 18, <del>insofar as practical.</del></p> <p>13.107(a)(6) When using <del>a teletype</del> for transmission of a request for quotations, the provisions and clauses applicable to the solicitation shall be incorporated by reference.</p>

### 13.108 Legal effect of quotations.

<i>Interim</i>	<i>Prior</i>
<p>(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)). Therefore, issuance by the Government of an order for supplies or services in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer or begins performance.</p>	<p>(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)). Therefore, issuance by the Government of an order for supplies or services in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract comes into being when the supplier accepts the offer.</p>

(b) When appropriate, the contracting officer may **ask** the supplier to indicate acceptance of an order by notification to the Government, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.504 for procedures on termination or cancellation of purchase orders.)

(b) When appropriate, the contracting officer may ~~request~~ the supplier to indicate acceptance of an order by notification to the Government, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.504 for procedures on termination or cancellation of purchase orders.)

### 13.109 Agency use of indefinite delivery contracts.

<i>Interim</i>	<i>Prior</i>
<p><b>Costs</b> and processing time <b>for acquisitions at or below the simplified acquisition threshold</b> may be reduced through the use of indefinite delivery contracts (see Subpart 16.5) that permit delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Therefore contracting offices are encouraged to seek opportunities to cooperate with each other to achieve efficiency and economy through the use of indefinite delivery contracts.</p>	<p>Small <del>purchase costs</del> and processing time may be reduced through the use of indefinite delivery contracts (see Subpart 16.5) that permit delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Therefore, contracting offices are encouraged to seek opportunities to cooperate with each other to achieve small purchase efficiency and economy through the use of indefinite delivery contracts.</p>

### 13.110 Federal Acquisition Streamlining Act of 1994 (FASA) list of inapplicable laws.

**[The following is all new text pursuant to FAR case 94-770, “Simplified Acquisition Procedures/FACNET”]**

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57(a) & (b) (Anti-Kickback Act of 1986). (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(2) 40 U.S.C. 27 (Miller Act).

(3) 40 U.S.C. 329 (Contract Work Hours and Safety Standards Act — Overtime Compensation).

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug Free Workplace Act of 1988), except for individuals.

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act)(Only the requirement for providing the estimate of recovered material utilized in the performance of the contract is inapplicable).



- (6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees).
- (7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors).
- (8) 10 U.S.C. 2384(b) (Requirement to Identify Suppliers and Sources of Supply).
- (9) 10 U.S.C. 2393(d) (Prohibition Against Doing Business with Certain Offerors or Contractors).
- (10) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States).
- (11) 10 U.S.C. 2408(a) (Prohibition on Persons Convicted of Defense Related Felonies).
- (12) 10 U.S.C. 2410b (Contractor Inventory Accounting System Standards).
- (13) 10 U.S.C. 2534 (Miscellaneous Procurement Limitations).

(b) The Federal Acquisition Regulatory Council will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the procurement of property or services, on the list set forth in 13.110(a), unless the FAR Council makes a written determination that it is in the best interests of the Government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of 13.110(b) do not apply to laws that—

- (1) Provide for criminal or civil penalties; or
- (2) Specifically state that notwithstanding the language of Section 4101, Pub. L. 103-355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator of the Office of Federal Procurement Policy to include any applicable provision of law not included on the list set forth in 13.110(a) unless the FAR Council has already determined in writing that the law is applicable. The Administrator of OFPP will include the law on the list in 13.110(a) unless the FAR Council makes a determination that it is applicable within sixty days of receiving the petition.

### 13.111 Inapplicable provisions and clauses

Pursuant to Pub. L. 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold—

- (a) 28.102-3, Miller Act requirements;
- (b) 52.203-1, Officials Not to Benefit;
- (c) 52.203-4, Contingent Fee Representation and Agreement;
- (d) 52.203-5, Covenant Against Contingent Fees;
- (e) 52.203-6, Restrictions on Subcontractor Sales to the Government;
- (f) 52.203-7, Anti-Kickback Procedures;
- (g) 52.215-1, Examination of Records by Comptroller General;
- (h) 52.222-4, Contract Work Hours and Safety Standards Act — Overtime Compensation;
- (i) 52.223-5, Certification Regarding a Drug-Free workplace; and
- (j) 52.223-6, Drug-Free Workplace, except for individuals.

### 13.112 Use of options in acquisition using simplified acquisition procedures

Options may be included in acquisitions using simplified acquisition procedures provided that the requirements of Subpart 17.2 are met, and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures under this part.

## SUBPART 13.2 — BLANKET PURCHASE AGREEMENTS

Sec.

- 13.201 General.
- 13.202 [Reserved]
- 13.203 Establishment of Blanket Purchase Agreements.
- 13.203-1 General.
- 13.203-2 Clauses.
- 13.204 Purchases under Blanket Purchase Agreements.
- 13.205 Review procedures.
- 13.206 Completion of Blanket Purchase Agreement.

### 13.201 General.

<i>Interim</i>	<i>Prior</i>
(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).	(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).
(b) <b>BPAs</b> should be established <b>for use by the</b> level responsible for providing supplies for its own op-	<del>(b) BPAs are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.</del>
	<del>(c) BPAs should be established at the appropriate</del> level responsible for providing supplies for its own op-

erations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of **BPAs** does not exempt the agency from the responsibility for keeping obligations and expenditures within available **funds**.

erations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

~~(d) The use of BPA's does not exempt the agency from responsibility for keeping obligations and expenditures within available funds, but this should be done by using simplified methods and by avoiding formal fiscal recording of individual deliveries and transactions.~~

## 13.202 [Reserved]

## 13.203 Establishment of Blanket Purchase Agreements.

### 13.203-1 General.

<i>Interim</i>	<i>Prior</i>
<p>(a) The following are circumstances under which contracting officers may establish <b>BPAs</b>:</p> <p>(1) If there is a wide variety of items in a broad class of goods (e.g., hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.</p> <p>(2) If there is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.</p> <p>(3) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.</p> <p>(b) A BPA should be established without a purchase requisition.</p> <p>(c) A BPA shall not cite accounting and appropriation data (<b>see</b> 13.204(e)(4)).</p> <p>(d) <b>BPAs</b> should be made with firms from which numerous individual purchases will likely be made in a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous purchases at or below the simplified acquisition threshold are usually made from such suppliers, it would be advantageous to establish BPAs with those firms.</p> <p>(e) To the extent practical, <b>BPAs</b> for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under</p>	<p>(a) The following are circumstances under which contracting officers may establish <b>BPA's</b>:</p> <p>(1) If there is a wide variety of items in a broad class of goods (e.g., hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.</p> <p>(2) If there is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.</p> <p>(3) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.</p> <p>(b) A BPA should be established without a purchase requisition.</p> <p>(c) A BPA shall not cite accounting and appropriation data (<del>but see</del> 13.204(e)(4)).</p> <p>(d) <b>BPA's</b> should be made with firms from which numerous individual purchases will likely be made in a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous small purchases are usually made from such suppliers, it would be advantageous to establish BPA's with those firms.</p> <p>(e) To the extent practical, <b>BPA's</b> for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under</p>

## **BPAs.**

(f) **BPAs** may also be established with Federal Supply Schedule contractors and **Federal Information Processing Multiple Award** Schedule contractors (see Part 39), if not inconsistent with the terms of the applicable schedule contract.

(g) If it is determined that **BPAs** would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, documenting the individual purchase transactions, periodic billing, and other necessary details.

(h) A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(i) **BPAs may** be prepared and issued on any agency-authorized purchase order form.

(j) BPAs shall contain the following terms and conditions:

(1) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Pricing.* A statement that the prices to the Government shall be as low or lower than those charged the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.

(4) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(5) *Notice of individuals authorized to purchase under the **BPA**.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to

## **BPA's.**

(f) **BPA's** may also be established with Federal Supply Schedule contractors and ~~GSA Nonmandatory ADP~~ Schedule contractors (see Part 39), if not inconsistent with the terms of the applicable schedule contract.

(g) If it is determined that **BPA's** would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, documenting the individual purchase transactions, periodic billing, and other necessary details.

(h) A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(i) ~~BPA's shall~~ be prepared and issued on any agency-authorized purchase order form.

(j) BPAs shall contain the following terms and conditions:

(1) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Pricing.* A statement that the prices to the Government shall be as low or lower than those charged the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.

(4) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(5) *Notice of individuals authorized to purchase under the ~~BPA and dollar limitations by title of position or name~~.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each

the supplier by the contracting officer.

(6) *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

- (i) Name of supplier.
- (ii) BPA number.
- (iii) Date of purchase.
- (iv) Purchase number.
- (v) Itemized list of supplies or services furnished.
- (vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).
- (vii) Date of delivery or shipment.

(7) *Invoices.* One of the following statements (except that the statement in paragraph ~~(j)~~(7)(iii) of this section should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that —

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(k) **BPAs** in which the fast payment procedure is used shall include the requirements stated under 13.303(b).

position title or individual shall be furnished to the supplier by the contracting officer.

(6) *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

- (i) Name of supplier.
- (ii) BPA number.
- (iii) Date of purchase.
- (iv) Purchase number.
- (v) Itemized list of supplies or services furnished.
- (vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).
- (vii) Date of delivery or shipment.

(7) *Invoices.* One of the following statements (except that statement-~~(iii)~~ should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that—

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(k) **BPA's** in which the fast payment procedure is used shall include the requirements stated under 13.303(b).

### 13.203-2 Clauses.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in the <b>regulation</b> that are required for or applicable to the particular BPA.</p> <p>(b) Unless a clause prescription specifies otherwise, (e.g., see 22.305(a)(1), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.</p>	<p>(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in the <b>FAR</b> that are required for or applicable to the particular BPA.</p> <p>(b) Unless a clause prescription specifies otherwise, (e.g., see 22.305(a)(1), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.</p>

### 13.204 Purchases under Blanket Purchase Agreements.

<i>Interim</i>	<i>Prior</i>
<p>(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the <b>BPA</b>, being a method of simplifying the making of individual purchases, shall not be used to avoid the <b>simplified acquisition threshold</b>.</p> <p>(b) Unless otherwise specified in agency regulations, individual purchases under <b>BPAs</b>, except those <b>BPAs</b> established in accordance with 13.203-1(f), shall not exceed <b>(i) \$50,000, or (ii) \$100,000 when the contracting office has certified interim FACNET (see 13.103(b)).</b></p> <p>(c) The existence of a BPA does not justify purchasing from only one source or avoiding small business set-asides. The requirements of 13.105 and 13.106 also apply to each order under a BPA.</p> <p>(d) If there is an insufficient number of <b>BPAs</b> to ensure maximum practicable competition for a particular purchase, the contracting officer shall —</p> <ol style="list-style-type: none"> <li>(1) Solicit quotations from other sources and make the purchase as appropriate; and</li> <li>(2) Establish additional <b>BPAs</b> to facilitate future purchases if — (i) <b>Recurring</b> requirements for the same or similar items or services seem likely, (ii) <b>Qualified</b> sources are willing to accept BPAs, and (iii) <b>It</b> is otherwise practical to do so.</li> </ol> <p>(e) Documentation of purchases under <b>BPAs</b> shall be limited to essential information and <b>forms</b> as follows:</p>	<p>(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the <del>blanket purchase agreement</del>, being a method of simplifying the making of individual <del>small</del> purchases, shall not be used to avoid the <del>small purchase limitation</del>.</p> <p>(b) Unless otherwise specified in agency regulations, individual purchases under <del>BPA's</del>, except those <del>BPA'S</del> established in accordance with 13.203-1(f), shall not exceed <del>the dollar limitation for small purchases (see 13.103)</del>.</p> <p>(c) The existence of a BPA does not justify purchasing from only one source or avoiding small business-<del>small</del> <del>purchase</del> set-asides. The requirements of 13.106 and 13.107 also apply to each order under a BPA.</p> <p>(d) If there is an insufficient number of <del>BPA's</del> to ensure maximum practicable competition for a particular purchase, the contracting officer shall—</p> <ol style="list-style-type: none"> <li>(1) Solicit quotations from other sources and make the purchase as appropriate; and</li> <li>(2) Establish additional <del>BPA's</del> to facilitate future purchases if (i) <del>recurring</del> requirements for the same or similar items or services seem likely, (ii) <del>qualified</del> sources are willing to accept BPA's, and (iii) <del>it</del> is otherwise practical to do so.</li> </ol> <p>(e) Documentation of purchases under <del>BPA's</del> shall be limited to essential information and <del>forms</del>, as follows:</p>

(1) Purchases under **BPAs** generally should be made **electronically, or orally when it is not considered economical or practical to use electronic methods.**

(2) A **paper** purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.

(3) If a **paper** document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(4) Documentation of purchases under **BPAs** shall also cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature and date on the agency specified form by the authorized Government representative after verification and notation of any exceptions.

(1) Purchases under BPA's generally should be made orally, but a purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.

~~(2) If a purchase document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.~~

~~(3) If a purchase document is issued, informal correspondence, an authorized purchase form, or a form developed locally for the purpose, may be used.~~

(4) Documentation of ~~individual~~ purchases under **BPA's** shall also cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature and date on the agency specified form by the authorized Government representative after verification and notation of any exceptions.

## SUBPART 13.3 — FAST PAYMENT PROCEDURE

### 13.302 Conditions for use.

<i>Interim</i>	<i>Prior</i>
If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:	If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:
(a) Individual orders do not exceed \$25,000 except that executive agencies may permit higher dollar limitations	(a) Individual orders do not exceed \$25,000 except that executive agencies may permit higher dollar limitations

for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance. Use of the fast payment procedure would not be indicated, for example, for small purchases by an activity if material being purchased is destined for use at that activity and contract administration will be performed by the **contracting** office at that activity.

(c) Title to the supplies will vest in the Government — (1) **Upon** delivery to a post office or common carrier for mailing or shipment to destination; or (2) **Upon** receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure— (1) **Documenting** evidence of contractor performance under fast payment **acquisitions**; (2) **Timely** feedback to the contracting officer in case of contractor **deficiencies**; **and** (3) **Identification** of suppliers who have a current history of abusing the fast payment procedure. **(also see Subpart 9.1.).**

for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance. Use of the fast payment procedure would not be indicated, for example, for small purchases by an activity if material being purchased is destined for use at that activity and contract administration will be performed by the ~~purchasing~~ office at that activity.

(c) Title to the supplies will vest in the Government (1) ~~upon~~ delivery to a post office or common carrier for mailing or shipment to destination, or (2) ~~upon~~ receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure (1) ~~documenting~~ evidence of contractor performance under fast payment ~~acquisitions~~; (2) ~~timely~~ feedback to the contracting officer in case of contractor ~~deficiencies~~, **and** (3) ~~identification~~ of suppliers who have a current history of abusing the fast payment procedure. ~~(Also see Subpart 9.1.)~~

### 13.303 Preparation and execution of orders.

<i>Interim</i>	<i>Prior</i>
<p>(a) <b>Except when orders are placed via FACNET, orders</b> incorporating the fast payment procedure should be issued on Optional Form 347, Order for Supplies or Services, or other agency authorized purchase order form <b>(see 13.204(e) for purchases under BPAs).</b> Orders may be either priced or unpriced.</p> <p>(b) Contracts, purchase orders, or <b>BPAs</b> using the fast payment procedure shall include the following:</p> <p>(1) A requirement that the supplies be shipped transportation or postage prepaid.</p>	<p>(a) <del>Orders</del> incorporating the fast payment procedure shall be issued on Optional Form 347, Order for Supplies or Services, or other agency authorized purchase order form <del>(but see 13.204(e) for purchases under BPA's).</del> Orders may be either priced or unpriced.</p> <p>(b) Contracts, purchase orders, or <del>BPA's</del> using the fast payment procedure shall include the following:</p> <p>(1) A requirement that the supplies be shipped transportation or postage prepaid.</p>



(2) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.502(c)).

(3) The following statement on consignee's copy: CONSIGNEE'S NOTIFICATION TO PURCHASING ACTIVITY OF NONRECEIPT, DAMAGE, OR NONCONFORMANCE  
The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

(4) A requirement that the contractor mark outer shipping containers "FAST PAY."

(2) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.502(c)).

(3) The following statement on consignee's copy: Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance. The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

(4) A requirement that the contractor mark outer shipping containers "FAST PAY."

### 13.305 Contract clause.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.213-1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.302 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of <b>BPAs</b> , the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).	The contracting officer shall insert the clause at 52.213-1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.302 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of <b>BPA's</b> , the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).

## SUBPART 13.4 — IMPREST FUND

Sec.

**13.401** General.

**13.402** Agency responsibilities.

**13.403** Conditions for use.

**13.404** Procedures.

### 13.401 General.

<i>Interim</i>	<i>Prior</i>
<p>This subpart prescribes policies and procedures for using imprest funds to <b>purchase</b> supplies or services. Related policies and regulations concerning the establishment of and accounting for imprest funds, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.</p>	<p><del><b>13.401 Definition.</b> Imprest fund," as used in this subpart, means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small purchases.</del></p> <p><b>13.402 General.</b> This subpart prescribes policies and procedures for using imprest funds to <del>make small purchases of</del> supplies or services. Related policies and regulations concerning the establishment of and accounting for imprest funds, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.</p>

### 13.402 Agency responsibilities.

<i>Interim</i>	<i>Prior</i>
<p>Each agency using imprest funds shall—</p> <p>(a) Periodically review and determine whether there is continuing need for each fund established, and that amounts of those funds are not in excess of actual needs;</p> <p>(b) Take prompt action to have imprest funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and</p> <p>(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—</p> <p>(1) Designation of personnel authorized to make purchases using imprest funds; and</p>	<p>Each agency using imprest funds shall—</p> <p>(a) Periodically review and determine whether there is continuing need for each fund established, and that amounts of those funds are not in excess of actual needs;</p> <p>(b) Take prompt action to have imprest funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and</p> <p>(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—</p> <p>(1) Designation of personnel authorized to make purchases using imprest funds; and</p>

(2) Documentation of purchases using imprest funds, including documentation of— (i) <b>Receipt</b> and acceptance of supplies and services by the <b>Government</b> ; (ii) <b>Receipt</b> of cash payments by the <b>suppliers</b> ; and (iii) <b>Cash</b> advances and reimbursements.	(2) Documentation of purchases using imprest funds, including documentation of (i) <del>receipt</del> and acceptance of supplies and services by the <del>Government</del> ; (ii) <del>receipt</del> of cash payments by the <del>suppliers</del> ; and (iii) <del>cash</del> advances and reimbursements.
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### 13.403 Conditions for use.

<i>Interim</i>	<i>Prior</i>
Imprest funds may be used for purchases when — (a) the transaction does not exceed \$500 or such other limits as have been approved by the agency head; (b) the use of imprest funds is considered to be advantageous to the Government; and (c) the use of imprest funds for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in <b>13.401</b> .	Imprest funds may be used for purchases when — (a) the transaction does not exceed \$500 or such other limits as have been approved by the agency head; (b) the use of imprest funds is considered to be advantageous to the Government; and (c) the use of imprest funds for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in <del>13.402</del> .

### 13.404 Procedures.

<i>Interim</i>	<i>Prior</i>
(a) Each purchase using imprest funds shall be based upon an authorized purchase requisition. (b) Normally, orders to suppliers should be placed orally and without soliciting competition if prices are considered reasonable. (c) Purchases shall be distributed equitably among qualified <b>suppliers</b> . (d) Prompt payment discounts shall be solicited. (e) Any agency-authorized purchase order form or Standard Form 1165, Receipt for Cash-Subvoucher, may be used if a written order is considered <b>necessary</b> ( <b>e.g.</b> , if required by the supplier for discount, tax exemption, or other <b>reasons</b> ). If a purchase order is used for this purpose, it shall be endorsed "Payment to be made from Imprest <b>Fund</b> ". (f) The individual authorized to make purchases using imprest funds shall— (1) Furnish to the imprest fund cashier a copy of the purchase requisition annotated to reflect— (i) <b>That</b> an imprest fund purchase has been <b>made</b> ; (ii) <b>The</b> unit prices and <b>extensions</b> ; (iii) <b>The</b> supplier's name and <b>address</b> ; (iv) <b>The</b> date of anticipated delivery; and (2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instru-	(a) Each purchase using imprest funds shall be based upon an authorized purchase requisition. (b) Normally, orders to suppliers should be placed orally and without soliciting competition if prices are considered reasonable. (c) Purchases shall be distributed equitably among qualified <del>suppliers</del> ( <del>see 13.105</del> ). (d) Prompt payment discounts shall be solicited. (e) Any agency-authorized purchase order form or Standard Form 1165, Receipt for Cash-Subvoucher, may be used if a written order is considered <del>necessary</del> ; <b>e.g.</b> , if required by the supplier for discount, tax exemption, or other <del>reasons</del> . If a purchase order is used for this purpose, it shall be endorsed "Payment to be made from Imprest <del>Fund</del> ." (f) The individual authorized to make purchases using imprest funds shall— (1) Furnish to the imprest fund cashier a copy of the purchase requisition annotated to reflect (i) <del>that</del> an imprest fund purchase has been <del>made</del> ; (ii) the unit prices and <del>extensions</del> ; (iii) <del>the</del> supplier's name and <del>address</del> ; and (iv) <del>the</del> date of anticipated delivery; and (2) Require the supplier to include with delivery of the

ment giving— (i) <b>The</b> supplier's name and <b>address</b> ; (ii) <b>List</b> and quantity of <b>items</b> ; (iii) <b>Unit</b> prices and <b>extensions</b> ; and (iv) <b>Cash</b> discount, if any.	supplies an invoice, packing slip, or other sales instrument giving (i) <del>the</del> supplier's name and <del>address</del> ; (ii) <del>list</del> and quantity of <del>items</del> ; (iii) <del>unit</del> prices and <del>extensions</del> ; and (iv) <del>cash</del> discount, if any.
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## SUBPART 13.5 — PURCHASE ORDERS

<i>Interim</i>	<i>Prior</i>
Sec.	Sec.
13.501 General.	13.501 General.
13.502 Unpriced purchase orders.	13.502 Unpriced purchase orders.
13.503 Obtaining contractor acceptance and modifying purchase orders.	13.503 Obtaining contractor acceptance and modifying purchase orders.
13.504 Termination or cancellation of purchase orders.	13.504 Termination or cancellation of purchase orders.
13.505 Purchase order and related forms.	13.505 Purchase order and related forms.
13.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.	13.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.
13.505-2 <b>[Reserved]</b>	13.505-2 <del>Agency order forms in lieu of Optional Forms 347 and 348.</del>
13.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.	13.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.
13.506 <b>Unsigned electronic purchase orders.</b>	13.506 <del>Purchase orders via written telecommunications.</del>
13.507 <b>Provisions and clauses.</b>	13.507 <del>Clauses.</del>

### 13.501 General.

<i>Interim</i>	<i>Prior</i>
(a) Except as provided under the unpriced purchase order method (see 13.502), purchase orders shall be issued on a fixed-price <b>basis unless otherwise authorized by agency procedures.</b>	(a) Except as provided under the unpriced purchase order method (see 13.502), purchase orders <del>(1)</del> shall be issued on a fixed-price <del>basis</del> , and <del>(2)</del> shall not contain economic price adjustment or redetermination clauses.
(b) Purchase orders shall include any trade and prompt payment discounts that are offered, consistent with the applicable principles in <b>14.408-3.</b>	(b) Purchase orders shall include any trade and prompt payment discounts that are offered, consistent with the applicable principles in <del>14.407-3.</del>
(c) Purchase orders shall specify the quantity of supplies or services <b>ordered.</b>	(c) Purchase orders shall specify the quantity of supplies or services <del>ordered (but see Subpart 12.4).</del>
(d) Inspections under <b>simplified acquisition procedures</b> shall be as prescribed in Part 46. Orders generally shall provide that inspection and acceptance	(d) Inspections under <del>small purchases</del> shall be as prescribed in Part 46. Orders generally shall provide that inspection and acceptance will be at <del>destination</del> and

will be at **destination**, and source inspection should be specified only if required by Part 46. If inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material.

(e) F.o.b. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.

(f) Each purchase order shall contain a determinable date by which delivery of supplies or performance of services is required.

(g) The contracting officer's signature on purchase orders shall be in accordance with 4.101. Facsimile signature may be used in the production of purchase orders by automated methods.

(h) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

source inspection should be specified only if required by Part 46. If inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material.

(e) F.o.b. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.

(f) Each purchase order shall contain a determinable date by which delivery of supplies or performance of services is required.

(g) The contracting officer's signature on purchase orders shall be in accordance with 4.101. Facsimile signature may be used in the production of purchase orders by automated methods.

(h) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

### 13.502 Unpriced purchase orders.

<i>Interim</i>	<i>Prior</i>
<p>(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.</p> <p>(b) An unpriced purchase order may be used only when—</p> <p>(1) It is anticipated that the transaction will not <b>exceed— (i) \$50,000; or (ii) \$100,000 when the contracting office of an agency has certified interim or full FACNET (see 13.103(b)).</b></p> <p>(2) It is impractical to obtain pricing in advance of issuance of the purchase order; and</p> <p>(3) The purchase is for—</p> <p>(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;</p> <p>(ii) Material available from only one source and for which cost cannot be readily established; or</p> <p>(iii) Supplies or services for which prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).</p>	<p>(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.</p> <p>(b) An unpriced purchase order may be used only when—</p> <p>(1) It is anticipated that the transaction will not <del>exceed</del> <b>the small purchase limit;</b></p> <p>(2) It is impractical to obtain pricing in advance of issuance of the purchase order; and</p> <p>(3) The purchase is for—</p> <p>(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;</p> <p>(ii) Material available from only one source and for which cost cannot be readily established; or</p> <p>(iii) Supplies or services for which prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).</p>

(c) Unpriced purchase orders may be issued by using written purchase orders or **electronically** (see 13.506). A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase **order**. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow-up each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see **13.106-2(a)**), process the invoice for payment.

(c) Unpriced purchase orders may be issued by using written purchase orders or ~~written telecommunications~~ (see 13.506). A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase ~~order~~ (see ~~13.507(d)~~). The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow-up each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see ~~13.106(b)~~), process the invoice for payment. [FAC 90-24]

### 13.503 Obtaining contractor acceptance and modifying purchase orders.

<i>Interim</i>	<i>Prior</i>
<p>(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written acceptance of the purchase order by the contractor.</p> <p>(b) A purchase order may be modified by use of —            (1) Standard Form 30, Amendment of Solicitation/Modification of Contract; (2) <b>An</b> agency-designed form or an agency-approved automated format; or (3) <b>A</b> purchase order form, if not prohibited by agency regulations.</p> <p>(c) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.</p> <p>(d) Contracting officers need not obtain a contractor's written acceptance of a purchase order modification, unless the written acceptance is —            (1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or            (2) Required by agency regulations.</p>	<p>(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written acceptance of the purchase order by the contractor.</p> <p>(b) A purchase order may be modified by use of (1) Standard Form 30, Amendment of Solicitation/ Modification of Contract; (2) <del>an</del> agency-designed form or an agency-approved automated format; or (3) <b>a</b> purchase order form, if not prohibited by agency regulations.</p> <p>(c) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.</p> <p>(d) Contracting officers need not obtain a contractor's written acceptance of a purchase order modification, unless the written acceptance is—            (1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or            (2) Required by agency regulations.</p>

### 13.504 Termination or cancellation of purchase orders.

<i>Interim</i>	<i>Prior</i>
<p>(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting</p>	<p>(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting</p>

officer shall process the termination action as prescribed by Part 49.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is **required (i.e., the purchase order shall be considered canceled).**

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed by Part 49.

officer shall process the termination action as prescribed by Part 49.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is ~~required; i.e.,~~ the purchase order shall be considered ~~canceled~~.

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed by Part 49.

### 13.505 Purchase order and related forms.

#### 13.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

<i>Interim</i>	<i>Prior</i>
<p>(a) Optional Form 347 (illustrated in 53.302-347) and Optional Form 348 (illustrated in 53.302-348) are multipurpose forms designed for the <b>following:</b></p> <ul style="list-style-type: none"><li>(1) <b>Negotiated purchases of supplies or services.</b></li><li>(2) <b>Delivery orders.</b></li><li>(3) <b>Inspection and receiving reports.</b></li><li>(4) <b>Invoices.</b></li></ul>	<p>(a) <del>General.</del> (1) Optional Form 347 (illustrated in 53.302-347) and Optional Form 348 (illustrated in 53.302-348) are multipurpose forms designed for the <del>following uses:</del> (i) Negotiated purchases of supplies or <del>services not in excess of the small purchase limit.</del></p> <ul style="list-style-type: none"><li>(ii) <del>A delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply.</del></li><li>(iii) <del>A receiving and inspection report.</del></li><li>(iv) <del>An invoice.</del></li></ul> <p>(2) <del>Optional Forms 347 and 348 may be used when the agency concerned considers it economical and efficient to do so (also see 13.505-2).</del></p> <p>(b) <del>Clauses.</del> (1) <del>Clauses generally suitable for most small purchases are incorporated by reference on the reverse of Optional Form 347 (but see 13.507).</del></p> <p>(2) <del>Agencies may add (i) other clauses prescribed by the FAR, as appropriate, and (ii) agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency clauses.</del></p>

(b) Agencies **may use** order forms **other than** Optional Form 347 **and 348 and** may print on those forms the clauses they consider to be generally suitable for their **purchases using simplified acquisition procedures. The clauses** may include agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency **clauses.**

**13.505-2 Agency order forms in lieu of Optional Forms 347 and 348.**

~~(a) Order forms used in lieu of Optional Forms 347 and 348 shall conform insofar as practicable with the forms illustrated in 53.302-347 and 53.302-348.~~

(b) Agencies ~~using agency order forms in lieu of~~ Optional Form 347 may print on those forms the clauses they consider to be generally suitable for ~~most of their small purchases. The clauses, however, (1) should include the clauses incorporated by reference on the reverse of Optional Form 347, (2) may include clauses not listed on the reverse of Optional Form 347 that are prescribed by the FAR, and (3) may include agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency clauses (see 13.507).~~

**13.505-2 [Reserved]**

**13.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.**

<i>Interim</i>	<i>Prior</i>
<p>(a) Standard Form 44, Purchase Order-Invoice-Voucher (illustrated in 53.301-44) is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher.</p> <p>(b) Standard Form 44 may be used if all of the following conditions are satisfied:</p> <p>(1) <b>The amount of the purchase is at or below the micro-purchase threshold, except</b> for purchases made under unusual and compelling <b>urgency or in support of a contingency operation.</b> Agencies may establish higher dollar limitations for specific activities or items.</p> <p>(2) The supplies or services are immediately available.</p> <p>(3) One delivery and one payment will be made.</p> <p>(4) Its use is determined to be more economical and efficient than use of other <b>simplified acquisition</b> methods.</p> <p>(c) General procedural instructions governing the use of Standard Form 44 are printed on the form and on the inside front cover of each book of forms.</p>	<p>(a) Standard Form 44, Purchase Order-Invoice-Voucher (illustrated in 53.301-44) is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher.</p> <p>(b) Standard Form 44 may be used if all of the following conditions are satisfied:</p> <p>(1) <del>Except for purchases made under unusual and compelling urgency, the amount of the purchase is not over \$2,500.</del> Agencies may establish higher dollar limitations for specific activities or items.</p> <p>(2) The supplies or services are immediately available.</p> <p>(3) One delivery and one payment will be made.</p> <p>(4) Its use is determined to be more economical and efficient than use of other <del>small purchase</del> methods.</p> <p>(c) General procedural instructions governing the use of Standard Form 44 are printed on the form and on the inside front cover of each book of forms.</p>



<p>(d) Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, clauses are not required for purchases using this form.</p> <p>(e) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.</p>	<p><del>13.507(b)</del> Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, clauses are not required for purchases using this form.</p> <p><del>(d)</del> Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.</p>
<b>13.506 Unsigned electronic purchase orders.</b>	<b><del>13.506 Purchase orders via written telecommunications.</del></b>
<i>Interim</i>	<i>Prior</i>
<p>(a) <b>An unsigned electronic</b> purchase order (EPO) may be <b>issued</b> when the following conditions are <b>present</b>—</p> <p>(1) Its use is more advantageous to the Government than any other <b>simplified acquisition method</b>;</p> <p>(2) <b>It</b> is acceptable to the <b>supplier</b>;</p> <p>(3) <b>It</b> is approved by the contracting <b>officer</b>;</p> <p>(4) <b>It</b> does not require written acceptance by the <b>supplier</b>; and</p> <p>(5) The purchasing office retains all contract administration functions.</p> <p>(b) When <b>an unsigned EPO</b> is used—</p> <p>(1) <b>Appropriate clauses</b> shall be incorporated by <b>reference</b>;</p> <p>(2) Administrative information that is not needed by the supplier <b>shall</b> be placed only on copies intended for internal distribution;</p> <p>(3) The same distribution shall be made of the <b>unsigned EPO</b> as is made of <b>signed</b> purchase orders; and</p> <p>(4) No purchase order form <b>is required</b>.</p> <p>(c) <b>An unsigned EPO</b> may be unpriced if it meets the conditions in 13.502.</p>	<p>(a) <del>A written telecommunicated purchase order is an order for supplies or services that is electrically transmitted to a supplier and is not signed by the contracting officer</del></p> <p><del>(b)</del> A written telecommunicated purchase order may be <del>used only</del> when <del>all of</del> the following conditions are <del>present</del>:</p> <p>(1) Its use is more advantageous to the Government than any other <del>small purchase technique</del>.</p> <p>(2) <del>An unsigned transmitted order</del> is acceptable to the <del>supplier</del>.</p> <p>(3) <del>The order</del> is approved by the contracting <del>officer</del> before its transmission.</p> <p>(4) <del>The order</del> does not require written acceptance by the <del>supplier</del>.</p> <p>(5) The purchasing office retains all contract administration functions.</p> <p><del>(c)</del> When a written telecommunicated purchase order is used—</p> <p>(1) <del>Clauses appropriate to the purchase order</del> shall be incorporated by <del>reference in the transmitted order</del>;</p> <p>(2) Administrative information that is not needed by the supplier <del>should not be transmitted but should</del> be placed only on copies intended for internal distribution;</p> <p>(3) The same distribution shall be made of the <del>transmitted order</del> as is made of <del>written</del> purchase orders; and</p> <p>(4) No purchase order form <del>shall be issued</del>.</p> <p><del>(d)</del> A written telecommunicated purchase order may be unpriced if it meets the conditions in 13.502.</p>

### 13.507 Provisions and clauses.

<i>Interim</i>	<i>Prior</i>
<p>(a) <b>Each</b> purchase order (and each purchase order modification (see 13.503)) shall incorporate all clauses required for or applicable to the particular acquisition.</p> <p>(b) The contracting officer shall insert the clause at 52.213-2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).</p> <p>(c) The contracting officer shall insert the clause at 52.213-3, Notice to Supplier, in unpriced purchase orders.</p>	<p>(a) <del>Except as provided in paragraph (b) below, each purchase order (and each purchase order modification (see 13.503)) shall incorporate all clauses required for or applicable to the particular acquisition. The clauses listed on Optional Form 347, are not necessarily all that are required.</del></p> <p><del>-(b) Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, clauses are not required for purchases using this form.</del></p> <p><del>-(e) The contracting officer shall insert the clause at 52.213-2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).</del></p> <p><del>-(d) The contracting officer shall insert the clause at 52.213-3, Notice to Supplier, in unpriced purchase orders.</del></p>

## PART 15 — CONTRACTING BY NEGOTIATION

### 15.106-1 Examination of Records clause.

<i>Interim</i>	<i>Prior</i>
<p>(a) This subsection implements 10 U.S.C. 2313(b) and (c) and 41 U.S.C. 254(c).</p> <p>(b) When contracting by negotiation, the contracting officer shall insert the clause at 52.215-1, Examination of Records by Comptroller General, in solicitations and contracts, except when—</p> <p>(1) <b>The contract amount is at or below the simplified acquisition threshold;</b></p> <p>* * * * *</p>	<p>(a) This subsection implements 10 U.S.C. 2313(b) and (c) and 41 U.S.C. 254(c).</p> <p>(b) When contracting by negotiation, the contracting officer shall insert the clause at 52.215-1, Examination of Records by Comptroller General, in solicitations and contracts, except when—</p> <p>(1) <del>Making small purchases (see Part 13);</del></p> <p>* * * * *</p>

### 15.106-2 Audit-Negotiation clause.

<i>Interim</i>	<i>Prior</i>
<p>(a) This subsection implements 10 U.S.C. 2313(a), 41 U.S.C. 254(b), 10 U.S.C. 2306(f), and OMB Circular No. A-133.</p> <p>(b) The contracting officer <b>shall</b> insert the clause at 52.215-2, <b>Audit-Negotiation</b>, in solicitations and contracts <b>when contracting by negotiation</b>, unless the acquisition is <b>made under simplified acquisition procedures</b>. In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.</p>	<p>(a) This subsection implements 10 U.S.C. 2313(a), 41 U.S.C. 254(b), 10 U.S.C. 2306(f), and OMB Circular No. A-133.</p> <p>(b) The contracting officer <del>shall, when contracting by negotiation</del>, insert the clause at 52.215-2, <del>Audit—Negotiation</del>, in solicitations and <del>contracts</del>, unless the acquisition is a <del>small purchase under Part 13</del>. In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.</p>

### 15.401 Applicability.

<i>Interim</i>	<i>Prior</i>
<p>This subpart applies to solicitations issued when contracting by negotiation, except—</p> <p>(a) <b>Acquisitions made under simplified acquisition procedures</b> (see Part 13); and</p> <p>(b) Two-step sealed bidding (see Subpart 14.5).</p>	<p>This subpart applies to solicitations issued when contracting by negotiation, except—</p> <p>(a) <del>Small purchases</del> (see Part 13); and</p> <p>(b) Two-step sealed bidding (see Subpart 14.5).</p>

## 15.602 Applicability.

<i>Interim</i>	<i>Prior</i>
<p>(a) This subpart applies to negotiated contracting when source selection is based on—</p> <ol style="list-style-type: none"> <li>(1) Cost or price competition between proposals that meet the Government’s minimum requirements stated in the solicitation; or</li> <li>(2) Competition involving an evaluation and comparison of cost or price and other factors.</li> </ol> <p>(b) <b>Except for 15.605, this subpart does not apply to acquisitions using simplified acquisition procedures. 15.605 applies only to contracts in excess of the simplified acquisition threshold. See 41 U.S.C. 253a and 10 U.S.C. 2305(2).</b></p>	<p>(a) This subpart applies to negotiated contracting when source selection is based on—</p> <ol style="list-style-type: none"> <li>(1) Cost or price competition between proposals that meet the Government’s minimum requirements stated in the solicitation; or</li> <li>(2) Competition involving an evaluation and comparison of cost or price and other factors.</li> </ol> <p>(b) <del>This subpart does not apply to small purchases under Part 13.</del></p>

## 15.804-2 Requiring certified cost or pricing data.

<i>Interim</i>	<i>Prior</i>
<p>(a) * * *</p> <p>* * * * *</p> <p>(3) The contracting officer may obtain certified cost or pricing data for pricing actions below the pertinent threshold in <b>paragraph (a)(1) of this section</b> provided the action exceeds the <b>simplified acquisition threshold</b>. For such pricing actions, the instances in which certified costs or pricing data and inclusion of defective pricing clauses would be justified should be few; however, the contracting officer shall give special consideration to requiring certified cost or pricing data for such pricing actions if the offeror, contractor, or subcontractor--</p> <ol style="list-style-type: none"> <li>(i) Has been the subject of recent or recurring, and significant findings of defective pricing;</li> <li>(ii) Currently has significant deficiencies in its cost estimating systems; or</li> <li>(iii) Has recently been indicted for, convicted of, or the subject of an administrative or judicial finding of fraud regarding its cost estimating systems or cost accounting practices.</li> </ol> <p>The contracting officer shall document the file to justify the requirement for cost or pricing data not required by regulation. The documentation shall include the contracting officer’s written finding that certified cost or pricing data are necessary, the facts supporting that finding, and the approval of the finding at a level above the contracting officer.</p>	<p>(a) * * *</p> <p>* * * * *</p> <p>(3) The contracting officer may obtain certified cost or pricing data for pricing actions below the pertinent threshold in <del>subparagraph (a) (1) of this subsection</del> provided the action exceeds the <del>small purchase limitation</del>. For such pricing actions, the instances in which certified costs or pricing data and inclusion of defective pricing clauses would be justified should be few; however, the contracting officer shall give special consideration to requiring certified cost or pricing data for such pricing actions if the offeror, contractor, or subcontractor--</p> <ol style="list-style-type: none"> <li>(i) Has been the subject of recent or recurring, and significant findings of defective pricing;</li> <li>(ii) Currently has significant deficiencies in its cost estimating systems; or</li> <li>(iii) Has recently been indicted for, convicted of, or the subject of an administrative or judicial finding of fraud regarding its cost estimating systems or cost accounting practices.</li> </ol> <p>The contracting officer shall document the file to justify the requirement for cost or pricing data not required by regulation. The documentation shall include the contracting officer’s written finding that certified cost or pricing data are necessary, the facts supporting that finding, and the approval of the finding at a level above the contracting officer.</p>

<p>(4) The contracting officer shall not require certified cost or pricing data when awarding a contract below the simplified acquisition threshold in Part 13.</p> <p>(5) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price (see 15.804-6(a)(2)).</p> <p>(b) * * * * *</p>	<p>(4) The contracting officer shall not require certified cost or pricing data when awarding a contract below the small purchase limitation at 13.000.</p> <p>(5) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price (see 15.804-6(a)(2).)</p> <p>(b) * * * * *</p>
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## 15.812-2 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.215-26, Integrity of Unit Prices, in all solicitations and contracts for other than—</p> <p>(1) <b>Acquisitions at or below the simplified acquisition threshold;</b></p> <p>* * * * *</p>	<p>(a) The contracting officer shall insert the clause at 52.215-26, Integrity of Unit Prices, in all solicitations and contracts for other than—</p> <p>(1) <del>Small purchases under Part 13;</del></p> <p>* * * * *</p>

## 15.1001 Notifications to unsuccessful offerors.

<i>Interim</i>	<i>Prior</i>
<p>* * * * *</p> <p>(b) * * * (1) When the proposal evaluation period for a solicitation <b>not using simplified acquisition procedures in Part 13</b> is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. * * *</p> <p>* * * * *</p> <p>(c) <u>Postaward notices.</u> (1) <b>After</b> award of contracts resulting from solicitations <b>not using simplified acquisition procedures</b>, the contracting officer shall notify unsuccessful offerors in <b>writing or electronically</b>, unless preaward notice was given under paragraph (b) of this section. The notice shall include—</p> <p>(i) The number of offerors solicited;</p> <p>(ii) The number of proposals received;</p> <p>(iii) The name and address of each offeror receiving an award;</p> <p>(iv) The items, quantities, and unit prices of each award</p>	<p>* * * * *</p> <p>(b) Preaward notices. (1) When the proposal evaluation period for a solicitation <del>estimated to exceed the small purchase limitation in part 13</del> is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. * * *</p> <p>* * * * *</p> <p>(c) Postaward notices. (1) <del>Promptly after</del> award of contracts resulting from solicitations <del>exceeding the small purchase limitation in Part 13</del>, the contracting officer shall notify unsuccessful offerors in <del>writing</del>; unless preaward notice was given under paragraph (b) of this section. The notice shall include—</p> <p>(i) The number of offerors solicited</p> <p>(ii) The number of proposals received;</p> <p>(iii) The name and address of each offeror receiving an award;</p> <p>(iv) The items, quantities, and unit prices of each award (if the number of items or other factors makes list-</p>

<p>(if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and</p> <p>(v) In general terms, the reason the offeror's proposal was not accepted, unless the price information in (iv) above readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.</p> <p>(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), the information in paragraph (c)(1) of this section shall be provided to unsuccessful offerors from designated or NAFTA countries promptly, but in no event later than seven working days after contract award.</p> <p>(3) Upon request, the contracting officer shall furnish the information described in 15.1001(c)(1)(i) through (v) to unsuccessful offerors in solicitations <b>using simplified acquisition procedures</b> in Part 13.</p>	<p>ing unit prices impracticable, only the total contract price need be furnished); and</p> <p>(v) In general terms, the reason the offeror's proposal was not accepted, unless the price information in (iv) above readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.</p> <p>(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), the information in paragraph (c)(1) of this section shall be provided to unsuccessful offerors from designated or NAFTA countries promptly, but in no event later than seven working days after contract award.</p> <p>(3) Upon request, the contracting officer shall furnish the information described in 15.1001(c)(1)(i) through (v) to unsuccessful offerors in solicitations <del>not exceeding the small purchase limitation in Part 13.</del></p>
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## PART 16— TYPES OF CONTRACTS

### 16.000 Scope of part.

<i>Interim</i>	<i>Prior</i>
This part describes types of contracts that may be used in acquisitions other than <b>those made under simplified acquisition procedures in Part 13, unless otherwise authorized by agency procedures.</b> It prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition.	This part describes types of contracts that may be used in acquisitions other than <del>small purchases under Part 13.</del> It prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition.

### 16.103 Negotiating contract type.

<i>Interim</i>	<i>Prior</i>
<p>* * * * *</p> <p>(d) Each contract file shall include documentation to show why the particular contract type was selected. Exceptions to this requirement are (1) <b>acquisitions made under simplified acquisition procedures in Part 13, unless otherwise required under agency procedures,</b> (2) contracts on a firm</p>	<p>* * * * *</p> <p>(d) Each contract file shall include documentation to show why the particular contract type was selected. Exceptions to this requirement are (1) <del>small purchases under Part 13;</del> (2) contracts on a firm fixed-price basis other than those for major systems or research and development, and (3) awards on the set-aside portion of</p>

fixed-price basis other than those for major systems or research and development, and (3) awards on the set-aside portion of sealed bid partial set-asides for small business or labor surplus area concerns.	sealed bid partial set-asides for small business or labor surplus area concerns.
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## 16.105 Solicitation provision.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall complete and insert the provision at 52.216-1, Type of Contract, in <b>a solicitation unless it is for (a) A fixed-price acquisition made under simplified acquisition procedures</b> (see Part 13); or (b) <b>Information</b> or planning purposes.	The contracting officer shall complete and insert the provision at 52.216-1, Type of Contract, in <del>requests for proposals and in requests for quotations unless the solicitation is for (a) a small purchase (see Part 13) or (b) information or planning purposes (see 15.405).</del>

# Part 19 - SMALL BUSINESS PROGRAMS ~~Part 19 - SMALL BUSINESS AND SMALL DIS-ADVANTAGED BUSINESS CONCERNS~~

## 19.102 Size standards.

<i>Interim</i>	<i>Prior</i>
<p>(a) The SBA establishes small business size standards on an industry-by-industry basis. (See 13 CFR 121.)</p> <p>(b) Small business size standards are applied by—</p> <p>(1) Classifying the product or service being acquired in the industry whose definition, as found in the Standard Industrial Classification (SIC) Manual, best describes the principal nature of the product or service being acquired;</p> <p>(2) Identifying the size standard SBA established for that industry; and</p> <p>(3) Specifying the size standard in the solicitation so that offerors can appropriately represent themselves as small or large.</p> <p>(c) For size standard purposes, a product or service shall be classified in only one industry, whose definition best describes the principal nature of the product or service being acquired even though for other purposes it</p>	<p>(a) The SBA establishes small business size standards on an industry-by-industry basis. (See 13 CFR 121.)</p> <p>(b) Small business size standards are applied by—</p> <p>(1) Classifying the product or service being acquired in the industry whose definition, as found in the Standard Industrial Classification (SIC) Manual, best describes the principal nature of the product or service being acquired;</p> <p>(2) Identifying the size standard SBA established for that industry; and</p> <p>(3) Specifying the size standard in the solicitation so that offerors can appropriately represent themselves as small or large.</p> <p>(c) For size standard purposes, a product or service shall be classified in only one industry, whose definition best describes the principal nature of the product or service being acquired even though for other purposes it</p>

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could be classified in more than one.

(d) When acquiring a product or service that could be classified in two or more industries with different size standards, contracting officers shall apply the size standard for the industry accounting for the greatest percentage of the contract price.

(e) If a solicitation calls for more than one item and allows offers to be submitted on any or all of the items, an offeror must meet the size standard for each item it offers to furnish. If a solicitation calling for more than one item requires offers on all or none of the items, an offeror may qualify as a small business by meeting the size standard for the item accounting for the greatest percentage of the total contract price.

(f) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when it has no more than 500 employees, and—

(1) Except as provided in subparagraphs (f)(2) through (f)(5) of this section, in the case of Government acquisitions set-aside for small businesses, such nonmanufacturer must furnish in the performance of the contract, the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States. The term “nonmanufacturer” includes a concern which can manufacture or produce the product referred to in the specific acquisition but does not do so in connection with that acquisition. For size determination purposes there can be only one manufacturer of the end item being procured. The manufacturer of the end item being acquired is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular acquisition is the manufacturer or a nonmanufacturer for the purpose of the size determination need not be consistent with whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act. However, see the limitations on subcontracting at 52.219-14 which apply to any small business offeror other than a regular dealer for purposes of set-asides and 8(a) awards.

(2) A concern which purchases items and packages them into a kit is considered to be a nonmanufacturer small business and can qualify as such for a given acquisition if it meets the size qualifications of a small nonmanufacturer for the acquisition, and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business.

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could be classified in more than one.

(d) When acquiring a product or service that could be classified in two or more industries with different size standards, contracting officers shall apply the size standard for the industry accounting for the greatest percentage of the contract price.

(e) If a solicitation calls for more than one item and allows offers to be submitted on any or all of the items, an offeror must meet the size standard for each item it offers to furnish. If a solicitation calling for more than one item requires offers on all or none of the items, an offeror may qualify as a small business by meeting the size standard for the item accounting for the greatest percentage of the total contract price.

(f) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when it has no more than 500 employees, and—

(1) Except as provided in subparagraphs (f)(2) through (f)(5) of this section, in the case of Government acquisitions set-aside for small businesses, such nonmanufacturer must furnish in the performance of the contract, the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States. The term “nonmanufacturer” includes a concern which can manufacture or produce the product referred to in the specific acquisition but does not do so in connection with that acquisition. For size determination purposes there can be only one manufacturer of the end item being procured. The manufacturer of the end item being acquired is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular acquisition is the manufacturer or a nonmanufacturer for the purpose of the size determination need not be consistent with whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act. However, see the limitations on subcontracting at 52.219-14 which apply to any small business offeror other than a regular dealer for purposes of set-asides and 8(a) awards.

(2) A concern which purchases items and packages them into a kit is considered to be a nonmanufacturer small business and can qualify as such for a given acquisition if it meets the size qualifications of a small nonmanufacturer for the acquisition, and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business.

—(3) If the acquisition is subject to and is actually

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(3) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.

(4) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then—

(i) In such cases, section 8(a)(17)(A) of the Small Business Act provides that the nonmanufacturer may furnish any domestic product if such nonmanufacturer is primarily engaged in the wholesale or retail trade and is a regular dealer, as defined pursuant to 41 U.S.C. 35(a) (see 22.601), in the product to be offered unless specifically exempted from section 35(a) by section 7(j)(13)(C) of the Small Business Act. For the most current listing of classes for which SBA has granted a waiver, contact the regional SBA office.

A listing is also available in the SBA's Procurement Automated Source System (PASS).

(ii) Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products.

(5) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(6) Requests for waivers shall be sent to the Chairman of the Associate Administrator for Procurement Assistance, United States Small Business Administration, Mail Code 6250, 409 Third Street, SW, Washington, DC 20416.

(g) The industry size standards are set forth in the following table. The table column labeled "SIC" follows the standard industrial classification code as published by the Government in the Standard Industrial Classification Manual. The Manual is intended to cover the entire field of economic activities. It classifies and defines activities by industry categories and is the source used by SBA as a guide in defining industries for size standards. The number of employees or annual receipts indicates the maximum allowed for a concern, including its affiliates, to be considered small.

~~procured under "small purchase procedures", such nonmanufacturer may furnish any domestically produced or manufactured product.~~

(4) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.

(5) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then—

(i) In such cases, section 8(a)(17)(A) of the Small Business Act provides that the nonmanufacturer may furnish any domestic product if such nonmanufacturer is primarily engaged in the wholesale or retail trade and is a regular dealer, as defined pursuant to 41 U.S.C. 35(a) (see 22.601), in the product to be offered unless specifically exempted from section 35(a) by section 7(j)(13)(C) of the Small Business Act. For the most current listing of classes for which SBA has granted a waiver, contact the regional SBA office.

A listing is also available in the SBA's Procurement Automated Source System (PASS).

(ii) Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products.

(6) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(7) Requests for waivers shall be sent to the Chairman of the Associate Administrator for Procurement Assistance, United States Small Business Administration, Mail Code 6250, 409 Third Street, SW, Washington, DC 20416.

(g) The industry size standards are set forth in the following table. The table column labeled "SIC" follows the standard industrial classification code as published by the Government in the Standard Industrial Classification Manual. The Manual is intended to cover the entire field of economic activities. It classifies and defines activities by industry categories and is the source used by SBA as a guide in defining industries for size standards. The number of employees or annual receipts indicates the maximum allowed for a concern, including its affiliates, to be considered small.

### 19.303 Determining product or service classifications.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall determine the appropriate standard industrial classification code and related small business size standard and include them in <b>solicitations above the micro-purchase threshold in 13.101.</b></p> <p>(b) If different products or services are required in the same solicitation, the solicitation shall identify the appropriate small business size standard for each product or service.</p> <p>(c) The contracting officer's determination is final unless appealed as provided below.</p> <p>(1) If the solicitation period is longer than 30 days, the appeal must be filed not less than 10 business days before the bid opening or proposal submission date. If the solicitation period is 30 days or is shorter than 30 days, the appeal must be filed not less than 5 business days before the bid opening or proposal submission date.</p> <p>(2) The appeal shall be in writing and shall be addressed to the Office of Hearings and Appeals, Small Business Administration, Washington, D.C. 20416. No particular form is prescribed for the appeal. However, time limits and procedures set forth in SBA's regulations at 13 CFR 121.11 are strictly enforced. The appellant shall submit an original and one legible copy of the appeal. In the case of telegraphic appeals, the telegraphic notice shall be confirmed by the next day mailing of a written appeal, in duplicate. The written appeal must contain the following certification: "I have read this document and, under penalty of perjury and the sanctions imposed under 18 U.S.C. 1001, of which I am aware, I certify that, to the best of my knowledge, the statements made therein are true and correct, and that this document is not being filed for the purpose of delay or harassment." The appeal shall include—</p> <p>(i) The substance and date of the determination being appealed;</p> <p>(ii) The number and date of the solicitation, and the name, address, and telephone number of the contracting officer;</p> <p>(iii) The reasons why the contracting officer's determination is alleged to be erroneous;</p> <p>(iv) Documentary evidence to support the allegation; and</p> <p>(v) The name, address, and telephone number</p>	<p>(a) The contracting officer shall determine the appropriate standard industrial classification code and related small business size standard and include them in <del>solicitations, except when small purchase procedures are used.</del></p> <p>(b) If different products or services are required in the same solicitation, the solicitation shall identify the appropriate small business size standard for each product or service.</p> <p>(c) The contracting officer's determination is final unless appealed as provided below.</p> <p>(1) If the solicitation period is longer than 30 days, the appeal must be filed not less than 10 business days before the bid opening or proposal submission date. If the solicitation period is 30 days or is shorter than 30 days, the appeal must be filed not less than 5 business days before the bid opening or proposal submission date.</p> <p>(2) The appeal shall be in writing and shall be addressed to the Office of Hearings and Appeals, Small Business Administration, Washington, D.C. 20416. No particular form is prescribed for the appeal. However, time limits and procedures set forth in SBA's regulations at 13 CFR 121.11 are strictly enforced. The appellant shall submit an original and one legible copy of the appeal. In the case of telegraphic appeals, the telegraphic notice shall be confirmed by the next day mailing of a written appeal, in duplicate. The written appeal must contain the following certification: "I have read this document and, under penalty of perjury and the sanctions imposed under 18 U.S.C. 1001, of which I am aware, I certify that, to the best of my knowledge, the statements made therein are true and correct, and that this document is not being filed for the purpose of delay or harassment." The appeal shall include—</p> <p>(i) The substance and date of the determination being appealed;</p> <p>(ii) The number and date of the solicitation, and the name, address, and telephone number of the contracting officer;</p> <p>(iii) The reasons why the contracting officer's determination is alleged to be erroneous;</p> <p>(iv) Documentary evidence to support the allegation; and</p> <p>(v) The name, address, and telephone number of the appellant; and</p>

<p>of the appellant; and</p> <p>(vi) A statement certifying that copies of the appeal have been provided the contracting officer.</p> <p>(3) The Office of Hearings and Appeals will notify the contracting officer of the date it received the appeal and the docket number assigned. The contracting officer's response, if any, to the appeal must include appropriate argument and evidence, must include the certification in paragraph (c)(2) above, and must be filed with the Office of Hearings and Appeals no later than 5 business days after receipt of the appeal. The Office of Hearings and Appeals, if possible, will inform the contracting officer of its ruling on the appeal before the end of the solicitation period. The SBA decision, if received before the date offers are due, shall be considered final and the solicitation shall be amended to (i) reflect the decision and (ii) change the date offers are due, if appropriate. SBA rulings received after the due date shall not apply to the pending acquisition, but shall apply to future acquisitions of the product or service.</p>	<p>(vi) A statement certifying that copies of the appeal have been provided the contracting officer.</p> <p>(3) The Office of Hearings and Appeals will notify the contracting officer of the date it received the appeal and the docket number assigned. The contracting officer's response, if any, to the appeal must include appropriate argument and evidence, must include the certification in paragraph (c)(2) above, and must be filed with the Office of Hearings and Appeals no later than 5 business days after receipt of the appeal. The Office of Hearings and Appeals, if possible, will inform the contracting officer of its ruling on the appeal before the end of the solicitation period. The SBA decision, if received before the date offers are due, shall be considered final and the solicitation shall be amended to (i) reflect the decision and (ii) change the date offers are due, if appropriate. SBA rulings received after the due date shall not apply to the pending acquisition, but shall apply to future acquisitions of the product or service.</p>
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### 19.304 Solicitation provisions and clause.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the provision at 52.219-1, Small Business Concern Representation, in solicitations <b>(other than micro-purchases)</b> when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.</p> <p>(b) The contracting officer shall insert the provision at 52.219-2, Small Disadvantaged Business Concern Representation, in solicitations <b>(other than micro purchases)</b>, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.</p> <p>(c) The contracting officer shall insert the provision at 52.219-3, Women-Owned Small Business Representation, in solicitations <b>(other than micro purchases)</b>, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.</p> <p>(d) The contracting officer shall insert the provision at 52.219-22, SIC Code and Small Business Size Standard, in solicitations <b>(other than micro purchases)</b>, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.</p>	<p>(a) The contracting officer shall insert the provision at 52.219-1, Small Business Concern Representation, in solicitations when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.</p> <p>(b) The contracting officer shall insert the provision at 52.219-2, Small Disadvantaged Business Concern Representation, in solicitations <b>(other than those for small purchases)</b>, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.</p> <p>(c) The contracting officer shall insert the provision at 52.219-3, Women-Owned Small Business Representation, in solicitations <b>(other than those for small purchases)</b>, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.</p> <p>(d) The contracting officer shall insert the provision at 52.219-22, SIC Code and Small Business Size Standard, in solicitations <b>(other than those for small purchases)</b>, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.</p>

## 19.501 General.

<i>Interim</i>	<i>Prior</i>
<p>(a) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A “set-aside for small business” is the reserving of an acquisition exclusively for participation by small business concerns. A set-aside may be open to all small businesses or, except for the Department of Defense, restricted to small businesses located in labor surplus areas. A set-aside of a single acquisition or a class of acquisitions may be total or partial.</p> <p>(b) The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer. A joint determination is one which is recommended by the Small Business Administration (SBA) procurement center representative and concurred in by the contracting officer.</p> <p>(c) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency’s small and disadvantaged business utilization program and documenting why a set-aside is inappropriate when the acquisition is not set aside. If the acquisition is set aside based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs.</p> <p>(d) At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative’s security clearance) all proposed acquisitions in excess of the <b>micro-purchase threshold in 13.106</b> that have not been unilaterally set aside for small business</p> <p>(e) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for small business set-asides rather than joint determinations by an SBA procurement center representative and a contracting officer.</p>	<p>(a) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A “set-aside for small business” is the reserving of an acquisition exclusively for participation by small business concerns. A set-aside may be open to all small businesses or, except for the Department of Defense, restricted to small businesses located in labor surplus areas. A set-aside of a single acquisition or a class of acquisitions may be total or partial.</p> <p>(b) The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer. A joint determination is one which is recommended by the Small Business Administration (SBA) procurement center representative and concurred in by the contracting officer.</p> <p>(c) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency’s small and disadvantaged business utilization program and documenting why a set-aside is inappropriate when the acquisition is not set aside. If the acquisition is set aside based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs. <del>In automated contracting systems, all proposed acquisitions which are not small business-small purchase set-asides will be considered for small business set-asides in accordance with 19.502-2(a). If necessary, the screening for set-asides will be accomplished before entering such requirements into the system.</del></p> <p>(d) At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative’s security clearance) all proposed acquisitions in excess of the <del>small purchase limitation in 13.000</del> that have not been unilaterally set aside for small business.</p> <p>(e) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for small business set-asides rather than joint determinations by an SBA procurement center representative and a contracting officer.</p> <p><del>(f)(1) Consistent with the requirements of Pub. L. 95-507, a special category of set-asides, identified as small business-small purchase set-asides, has been established</del></p>

(f) All solicitations involving set-asides must specify the applicable small business size standard and product classification (see 19.303).

(g) Except as authorized by law, a contract may not be awarded as a result of a set-aside if the cost to the awarding agency exceeds the fair market price.

(h) Section 133 of Public Law 100-590 authorizes public and private organizations for the handicapped to participate for fiscal years 1989 through 1993 in acquisitions set-aside for small business concerns. Status as a small business concern is not accorded a public or private organization for the handicapped for the purposes of other preferential provisions available to small business concerns; e.g., eligibility for certificates of competency or higher progress payment rates.

(i) The contracting officer shall rely on the offeror's self-certification in a specific bid or proposal that it is a public or private organization for the handicapped unless another offeror or interested party files a protest. An interested party may file a protest challenging an offeror's self-certification by forwarding the protest to the contracting officer by close of business on the fifth working day after bid opening or receipt of the 15.1001(b)(2) notice from the contracting officer of the apparently successful offeror. Upon receipt of any protest, whether timely or untimely, the contracting officer shall promptly forward the protest and its supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration. Upon receipt of a protest, the SBA will notify the contracting officer and the protester of the date it was received,

for acquisitions of supplies or services that have an anticipated dollar value of \$25,000 or less and are subject to small purchase procedures (see 13.105 and 19.508).

—(2) A small nonmanufacturer responding to a small business small purchase set-aside may furnish any domestically produced or manufactured product.

—(g) Once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service not subject to simplified small purchase procedures shall, if required by agency regulations, be acquired on the basis of a repetitive set-aside. This procedure will be followed unless the contracting officer determines that there is not a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (2) awards will be made at fair market prices. Withdrawal of a repetitive set-aside will be in accordance with 19.506.

—(h) All solicitations involving set-asides must specify the applicable small business size standard and product classification (see 19.303).

(i) Except as authorized by law, a contract may not be awarded as a result of a set-aside if the cost to the awarding agency exceeds the fair market price.

(j) Section 133 of Public Law 100-590 authorizes public and private organizations for the handicapped to participate for fiscal years 1989 through 1993 in acquisitions set-aside for small business concerns. Status as a small business concern is not accorded a public or private organization for the handicapped for the purposes of other preferential provisions available to small business concerns; e.g., eligibility for certificates of competency or higher progress payment rates.

(l) The contracting officer shall rely on the offeror's self-certification in a specific bid or proposal that it is a public or private organization for the handicapped unless another offeror or interested party files a protest. An interested party may file a protest challenging an offeror's self-certification by forwarding the protest to the contracting officer by close of business on the fifth working day after bid opening or receipt of the 15.1001(b)(2) notice from the contracting officer of the apparently successful offeror. Upon receipt of any protest, whether timely or untimely, the contracting officer shall promptly forward the protest and its supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration. Upon receipt of a protest, the SBA will notify the contracting officer and the protester of the date it was received, and that the status of the public or private organization for the handicapped being challenged is under

and that the status of the public or private organization for the handicapped being challenged is under consideration by the SBA. Within 10 work days after receiving a protest, the SBA will determine the eligibility of the public or private organization for the handicapped and notify the contracting officer, the protester, and the challenged offeror of its decision by certified mail, return receipt requested. The determination of the Associate Administrator for Procurement Assistance, SBA, is final. Award will be made based on this determination. After receiving a protest involving the status of a public or private organization for the handicapped, the contracting officer shall not award the contract until (i) the SBA has made a status determination or (ii) 10 working days have expired since SBA's receipt of a protest, whichever occurs first. However, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) Any small business offeror which experiences or is likely to experience severe economic injury as a result of award to a public or private organization for the handicapped may file an appeal of the award with the contracting officer. The appeal must be received by close of business on the tenth working day after bid opening or receipt of the 15.1001(b)(2) notice from the contracting officer of the apparently successful offeror. Upon receipt of any appeal, whether timely or untimely, or whether received before or after award, the contracting officer shall forward the appeal and supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration, whose decision shall be final. The contracting officer should, when practical, withhold award until expiration of the 10-day appeal period, or; when an appeal is filed, withhold award until the contracting officer receives the SBA determination of appeal, unless delay would be disadvantageous to the Government. The SBA shall notify the contracting officer of the SBA determination and advise the agency or department to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

consideration by the SBA. Within 10 work days after receiving a protest, the SBA will determine the eligibility of the public or private organization for the handicapped and notify the contracting officer, the protester, and the challenged offeror of its decision by certified mail, return receipt requested. The determination of the Associate Administrator for Procurement Assistance, SBA, is final. Award will be made based on this determination. After receiving a protest involving the status of a public or private organization for the handicapped, the contracting officer shall not award the contract until (i) the SBA has made a status determination or (ii) 10 working days have expired since SBA's receipt of a protest, whichever occurs first. However, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) Any small business offeror which experiences or is likely to experience severe economic injury as a result of award to a public or private organization for the handicapped may file an appeal of the award with the contracting officer. The appeal must be received by close of business on the tenth working day after bid opening or receipt of the 15.1001(b)(2) notice from the contracting officer of the apparently successful offeror. Upon receipt of any appeal, whether timely or untimely, or whether received before or after award, the contracting officer shall forward the appeal and supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration, whose decision shall be final. The contracting officer should, when practical, withhold award until expiration of the 10-day appeal period, or; when an appeal is filed, withhold award until the contracting officer receives the SBA determination of appeal, unless delay would be disadvantageous to the Government. The SBA shall notify the contracting officer of the SBA determination and advise the agency or department to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

## 19.502-1 Requirements for setting aside acquisitions.

<i>Interim</i>	<i>Prior</i>
Using the order of precedence in 19.504, the contracting	Using the order of precedence in 19.504, the contracting

<p>officer shall set aside an individual acquisition or class of acquisitions when it is determined to be in the interest of (a) maintaining or mobilizing the Nation's full productive capacity, (b) war or national defense programs, or (c) assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns, and when the circumstances described in 19.502-2 or 19.502-3(a) exist. <b>This requirement does not apply to purchases of \$2,500 or less, purchases from required sources of supply under Part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts), or orders under Federal Information Processing (FIP) Multiple Award Schedule contracts.</b></p>	<p>officer shall set aside an individual acquisition or class of acquisitions when it is determined to be in the interest of (a) maintaining or mobilizing the Nation's full productive capacity, (b) war or national defense programs, or (c) assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns, and when the circumstances described in 19.502-2 or 19.502-3(a) exist.</p>
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#### 19.502-2 Total set-asides.

<i>Interim</i>	<i>Prior</i>
<p><b>(a) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500, but not over \$100,000, is automatically reserved exclusively for small business concerns, unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and with regard to the quality and delivery of the goods or services being purchased. This requirement does not preclude the award of a contract with a value not greater than \$100,000 under 19.8, Contracting with the Small Business Administration, or under 19.1006(c), Emerging small business set-aside.</b></p> <p><b>(b) The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and (2) awards will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides). Although past acquisition history of</b></p>	<p>—(a) The entire amount of an individual acquisition or class of acquisitions, including contracts for architect-engineer services, research, development, test and evaluation, maintenance repair, and construction except small business-small purchase set-asides, shall be set aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (b) of this subsection); and (2) awards will be made at fair market prices. Total set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides). Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&amp;D small business set-asides, there must also be a reasonable expectation of obtaining from small business the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performance, and schedules.</p> <p>—(b) In industries where the SBA finds that there are no small business manufacturers, it may waive the non-manufacturers rule for regular dealers (see 19.102(f)(5)). This would permit small business regular dealers to provide any domestically produced product. In these cases, the contracting officer's determination in subparagraph</p>

<p><b>the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&amp;D small business set-asides, there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.</b></p> <p><b>(c) For set-asides other than for construction or services, any concern proposing to furnish the product which it did not itself manufacture must furnish the product of a small business manufacturer unless the Small Business Administration has granted a waiver (see 19.102(f)). In industries where the SBA finds that there are no small business manufacturers, it may waive the non-manufacturers rule for regular dealers (see 19.102(f)(4)). This would permit small business regular dealers to provide any firm's product. In these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set-aside a procurement reserved for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small business regular dealers offering the products of different concerns.</b></p> <p><b>(d) The requirements of this section do not apply to acquisitions over \$25,000 during the period when set-asides cannot be considered for the four designated industry groups (see 19.1006(b)).</b></p>	<p><del>(a)(1) of this subsection will be based on offers from at least two responsible small business regular dealers offering the products of different domestic concerns.</del></p>
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### 19.502-3 Partial set-asides.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when—</p> <ul style="list-style-type: none"> <li>(1) A total set-aside is not appropriate (see 19.502-2);</li> <li>(2) The requirement is severable into two or more economic production runs or reasonable lots;</li> <li>(3) One or more small business concerns are expected to have the technical competence and productive capacity to satisfy the set-aside portion of the re-</li> </ul>	<p>(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when—</p> <ul style="list-style-type: none"> <li>(1) A total set-aside is not appropriate (see 19.502-2);</li> <li>(2) The requirement is severable into two or more economic production runs or reasonable lots;</li> <li>(3) One or more small business concerns are expected to have the technical competence and productive capacity to satisfy the set-aside portion of the re-</li> </ul>



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quirement at a fair market price;

(4) The acquisition is not subject to **simplified acquisition** procedures; and

(5) A partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers unless authorized by the head of a contracting activity on a case-by-case basis. Similarly, a class of acquisitions, not including construction, may be partially set aside. Under certain specified conditions, partial set-asides may be used in conjunction with multiyear contracting procedures.

(b) When the contracting officer determines that a portion of an acquisition is to be set aside, the requirement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall (1) be an economic production run or reasonable lot and (2) have terms and a delivery schedule comparable to the other. When practicable, the set-aside portion should make maximum use of small business capacity.

(c)(1) The contracting officer shall award the non-set-aside portion using normal contracting procedures.

(2)(i) After all awards have been made on the non-set-aside portion, the contracting officer shall negotiate with eligible concerns on the set-aside portion, as provided in the solicitation, and make award. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the solicitation (but see (ii) below). The set-aside portion shall be awarded as provided in the solicitation. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in the price from the low eligible offeror before award, acceptance of voluntary refunds, or the change of prices after award by negotiation of a contract modification.

(ii) If equal low offers are received on the non-set-aside portion from concerns eligible for the set-aside portion, the concern that is awarded the non-set-aside part of the acquisition shall have first priority with respect to negotiations for the set-aside.

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quirement at a fair market price;

(4) The acquisition is not subject to ~~small-purchase~~ procedures; and

(5) A partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers unless authorized by the head of a contracting activity on a case-by-case basis. Similarly, a class of acquisitions, not including construction, may be partially set aside. Under certain specified conditions, partial set-asides may be used in conjunction with multiyear contracting procedures.

(b) When the contracting officer determines that a portion of an acquisition is to be set aside, the requirement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall (1) be an economic production run or reasonable lot and (2) have terms and a delivery schedule comparable to the other. When practicable, the set-aside portion should make maximum use of small business capacity.

(c)(1) The contracting officer shall award the non-set-aside portion using normal contracting procedures.

(2)(i) After all awards have been made on the non-set-aside portion, the contracting officer shall negotiate with eligible concerns on the set-aside portion, as provided in the solicitation, and make award. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the solicitation (but see (ii) below). The set-aside portion shall be awarded as provided in the solicitation. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in the price from the low eligible offeror before award, acceptance of voluntary refunds, or the change of prices after award by negotiation of a contract modification.

(ii) If equal low offers are received on the non-set-aside portion from concerns eligible for the set-aside portion, the concern that is awarded the non-set-aside part of the acquisition shall have first priority with respect to negotiations for the set-aside.

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## 19.502-4 Methods of conducting set-asides.

<i>Interim</i>	<i>Prior</i>
<p>(a) <b>Total set-asides may be conducted by using simplified acquisition procedures (see Part 13), sealed bids (see Part 14), or competitive proposals (see Part 15). Partial</b> small business set-asides may be conducted by using sealed bids (see Part <b>14</b>), or competitive proposals (see Part 15). (See Part 6 for competition requirements.)</p> <p>(b) Except for offers on the non-set-aside portion of partial set-asides, offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see Subpart 19.3). [FAC 90-23]</p>	<p>(a) <del>Total and partial</del> small business set-asides may be conducted by using sealed bids (see Part <del>14</del>) or competitive proposals (see Part 15). (See Part 6 for competition requirements.)</p> <p>(b) Except for offers on the non-set-aside portion of partial set-asides, offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see Subpart 19.3). [FAC 90-23]</p>

## 19.503 Setting aside a class of acquisitions.

<i>Interim</i>	<i>Prior</i>
<p>(a) A class of acquisitions of selected products or services, or a portion of the acquisitions, may be set aside for exclusive participation by small business concerns if individual acquisitions in the class will meet the criteria in 19.502-1, 19.502-2, or 19.502-3(a). The determination to make a class set-aside shall not depend on the existence of a current acquisition if future acquisitions can be clearly foreseen.</p> <p>(b) The determination to set aside a class of acquisitions may be either unilateral or joint.</p> <p>(c) Each class set-aside determination shall be in writing and must—</p> <ol style="list-style-type: none"> <li>(1) Specifically identify the product(s) and service(s) it covers;</li> <li>(2) Provide that the set-aside does not apply to any acquisition <b>automatically reserved for small business concerns under 19.502-2(a);</b></li> <li>(3) Provide that the set-aside applies only to the (named) contracting office(s) making the determination; and</li> <li>(4) Provide that the set-aside does not apply to any individual acquisition if the requirement is not severable into two or more economic production runs or reasonable lots, in the case of a partial class set-aside.</li> </ol> <p>(d) The contracting officer shall review each individual acquisition arising under a class set-aside to identify any changes in the magnitude of requirements,</p>	<p>(a) A class of acquisitions of selected products or services, or a portion of the acquisitions, may be set aside for exclusive participation by small business concerns if individual acquisitions in the class will meet the criteria in 19.502-1, 19.502-2, or 19.502-3(a). The determination to make a class set-aside shall not depend on the existence of a current acquisition if future acquisitions can be clearly foreseen.</p> <p>(b) The determination to set aside a class of acquisitions may be either unilateral or joint.</p> <p>(c) Each class set-aside determination shall be in writing and must—</p> <ol style="list-style-type: none"> <li>(1) Specifically identify the product(s) and service(s) it covers;</li> <li>(2) Provide that the set-aside does not apply to any acquisition <del>accomplished using small purchase procedures;</del></li> <li>(3) Provide that the set-aside applies only to the (named) contracting office(s) making the determination; and</li> <li>(4) Provide that the set-aside does not apply to any individual acquisition if the requirement is not severable into two or more economic production runs or reasonable lots, in the case of a partial class set-aside.</li> </ol> <p>(d) The contracting officer shall review each individual acquisition arising under a class set-aside to identify any changes in the magnitude of requirements,</p>

specifications, delivery requirements, or competitive market conditions that have occurred since the initial approval of the class set-aside. If there are any changes of such a material nature as to result in probable payment of more than a fair market price by the Government or in a change in the capability of small business concerns to satisfy the requirements, the contracting officer may withdraw or modify (see 19.506(a)) the unilateral or joint set-aside by giving written notice to the SBA procurement center representative (if one is assigned), stating the reasons.	specifications, delivery requirements, or competitive market conditions that have occurred since the initial approval of the class set-aside. If there are any changes of such a material nature as to result in probable payment of more than a fair market price by the Government or in a change in the capability of small business concerns to satisfy the requirements, the contracting officer may withdraw or modify (see 19.506(a)) the unilateral or joint set-aside by giving written notice to the SBA procurement center representative (if one is assigned), stating the reasons.
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### 19.506 Withdrawing or modifying set-asides.

<i>Interim</i>	<i>Prior</i>
<p>(a) If, before award of a contract involving a set-aside for small business, the contracting officer considers that award to a small business concern would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may withdraw the set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small and disadvantaged business utilization specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.</p> <p>(b) If the agency small and disadvantaged business utilization representative does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small and disadvantaged business utilization representative and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides <b>(19.507)</b> or <b>dissolutions of set-asides of acquisitions automatically reserved exclusively for small business concerns (19.502-2(a))</b>.</p> <p>(c) The contracting officer shall prepare a written statement supporting any withdrawal or modification of a set-aside and include it in the contract file.</p>	<p>(a) If, before award of a contract involving a set-aside for small business, the contracting officer considers that award to a small business concern would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may withdraw the set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small and disadvantaged business utilization specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.</p> <p>(b) If the agency small and disadvantaged business utilization representative does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small and disadvantaged business utilization representative and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides <del>(see 19.507)</del> or <del>dissolution of small business-small-purchase set-asides (see 13.105)</del>.</p> <p>(c) The contracting officer shall prepare a written statement supporting any withdrawal or modification of a set-aside and include it in the contract file.</p>

### 19.508 Solicitation provisions and contract clauses.

<i>Interim</i>	<i>Prior</i>
<p>(a) <b>[Reserved]</b></p> <p>(b) (This paragraph (b) does not apply to DOD.) The contracting officer shall insert the clause at 52.219-5, Notice of Total Small Business-Labor Surplus Area Set-Aside, in solicitations and contracts involving total small business-labor surplus area set-asides (see 19.504(a)(1)). The clause at 52.219-5 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).</p> <p>(c) The contracting officer shall insert the clause at 52.219-6, Notice of Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides (see 19.504(a)(2)). The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with <b>19.502-2(c)</b>.</p> <p>(d) The contracting officer shall insert the clause at 52.219-7, Notice of Partial Small Business Set-Aside, in solicitations and contracts involving partial small business set-asides (see 19.504(a)(4)). The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with <b>19.502-2(c)</b>.</p> <p>(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business, or if the contract is to be awarded under Subpart 19.8, except those awarded using <b>simplified acquisition</b> procedures in Part 13.</p> <p>(f) The contracting officer shall insert the clause at 52.219-15, Notice of Participation by Organizations for the Handicapped, in solicitations and contracts issued through September 30, 1993, involving total or partial small business set-asides.</p>	<p>(a) <del>The contracting officer shall insert the provision at 52.219-4, Notice of Small Business-Small Purchase Set-Aside, in each written solicitation of quotations or offers to provide supplies and/or services when (1) the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands, (2) the contract amount is expected to be \$25,000 or less, and (3) the acquisition is subject to small purchase procedures; unless purchase on an unrestricted basis is appropriate, as specified in 13.105(d).</del></p> <p>(b) (This paragraph (b) does not apply to DOD.) The contracting officer shall insert the clause at 52.219-5, Notice of Total Small Business-Labor Surplus Area Set-Aside, in solicitations and contracts involving total small business-labor surplus area set-asides (see 19.504(a)(1)). The clause at 52.219-5 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).</p> <p>(c) The contracting officer shall insert the clause at 52.219-6, Notice of Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides (see 19.504(a)(2)). The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with <del>19.502-2(b)</del>.</p> <p>(d) The contracting officer shall insert the clause at 52.219-7, Notice of Partial Small Business Set-Aside, in solicitations and contracts involving partial small business set-asides (see 19.504(a)(4)). The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).</p> <p>(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business, or if the contract is to be awarded under Subpart 19.8, except those awarded using <del>small purchase</del> procedures in Part 13.</p> <p>(f) The contracting officer shall insert the clause at 52.219-15, Notice of Participation by Organizations for the Handicapped, in solicitations and contracts issued through September 30, 1993, involving total or partial small business set-asides.</p>

## 19.702 Statutory requirements.

<i>Interim</i>	<i>Prior</i>
<p>Any contractor receiving a contract for more than the <b>simplified acquisition threshold</b> in <b>13.101</b> shall agree in the contract that small business concerns and small disadvantaged business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.</p> <p>(a) Except as stated in paragraph (b) of this section, the Small Business Act imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans.</p> <p>(1) In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, which individually is expected to exceed \$500,000 (\$1,000,000 for construction) and that has subcontracting possibilities shall require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparently successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror will be ineligible for award.</p> <p>(2) In sealed bidding acquisitions, each invitation for bids to perform a contract or contract modification, which individually is expected to exceed \$500,000 (\$1,000,000 for construction) and that has subcontracting possibilities, shall require the bidder selected for award to submit a subcontracting plan. If the selected bidder fails to submit a plan within the time limit prescribed by the contracting officer, the bidder will be ineligible for award.</p> <p>(b) Subcontracting plans (see subparagraphs (a)(1) and (2) of this section) are not required—</p> <p>(1) From small business concerns;</p> <p>(2) For personal services contracts;</p> <p>(3) For contracts or contract modifications that will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; or</p> <p>(4) For modifications to contracts that do not contain the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (or equivalent prior DAR, FPR, or NASA clauses); e.g., contracts awarded before Pub. L. 95-507</p>	<p>Any contractor receiving a contract for more than the <del>small purchase limitation</del> in <del>13.000</del> shall agree in the contract that small business concerns and small disadvantaged business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.</p> <p>(a) Except as stated in paragraph (b) of this section, the Small Business Act imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans.</p> <p>(1) In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, which individually is expected to exceed \$500,000 (\$1,000,000 for construction) and that has subcontracting possibilities shall require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparently successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror will be ineligible for award.</p> <p>(2) In sealed bidding acquisitions, each invitation for bids to perform a contract or contract modification, which individually is expected to exceed \$500,000 (\$1,000,000 for construction) and that has subcontracting possibilities, shall require the bidder selected for award to submit a subcontracting plan. If the selected bidder fails to submit a plan within the time limit prescribed by the contracting officer, the bidder will be ineligible for award.</p> <p>(b) Subcontracting plans (see subparagraphs (a)(1) and (2) of this section) are not required—</p> <p>(1) From small business concerns;</p> <p>(2) For personal services contracts;</p> <p>(3) For contracts or contract modifications that will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; or</p> <p>(4) For modifications to contracts that do not contain the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (or equivalent prior DAR, FPR, or NASA clauses); e.g., contracts awarded before Pub. L. 95-507</p>

<p>and which are within the scope of the contract.</p> <p>(c) As stated in 15 U.S.C. 637(d)(8), any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. Further, 15 U.S.C. 637(d)(4)(F) directs that a contractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan shall result in the imposition of liquidated damages.</p>	<p>and which are within the scope of the contract.</p> <p>(c) As stated in 15 U.S.C. 637(d)(8), any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. Further, 15 U.S.C. 637(d)(4)(F) directs that a contractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan shall result in the imposition of liquidated damages.</p>
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## 19.708 Solicitation provisions and contract clauses.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, in solicitations and contracts when the contract amount is expected to be over the <b>simplified acquisition threshold</b> in <b>13.101</b> unless—</p> <p>(1) A personal services contract is contemplated (see 37.104); or</p> <p>(2) The contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.</p> <p>(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, in solicitations and contracts that (i) offer subcontracting possibilities, (ii) are expected to exceed \$500,000 (\$1,000,000 for construction of any public facility), and (iii) are required to include the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, unless the acquisition has been set aside for small business or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.</p> <p>(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages—Small Business Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, or its Alternate I.</p> <p>(c)(1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns, when a subcontracting plan is required (see 19.702(a)(1)), and</p>	<p>(a) The contracting officer shall insert the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, in solicitations and contracts when the contract amount is expected to be over the <del>small purchase limitation</del> in <del>13.000</del> unless—</p> <p>(1) A personal services contract is contemplated (see 37.104); or</p> <p>(2) The contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.</p> <p>(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, in solicitations and contracts that (i) offer subcontracting possibilities, (ii) are expected to exceed \$500,000 (\$1,000,000 for construction of any public facility), and (iii) are required to include the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, unless the acquisition has been set aside for small business or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.</p> <p>(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages—Small Business Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, or its Alternate I.</p> <p>(c)(1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns, when a subcontracting plan is required (see 19.702(a)(1)), and</p>

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inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small and disadvantaged business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in (c)(3) below are applicable. The contracting officer may vary the terms of the clause as specified in (c)(2) below.

(2) Various approaches may be used in the development of small and small disadvantaged business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria (see (c)(3) below). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in (c)(2) above, the contracting officer may include small and small disadvantaged business subcontracting as one of the factors to be considered in determining the award-fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.

(a) Upon receipt of the contracting agency's offer, the SBA will determine whether to accept the requirement for the 8(a) Program. The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 15 working days of receipt of the offer, unless the SBA requests, and the contracting agency grants, an extension.

(b) If the acquisition is accepted as a sole source, the SBA will advise the contracting activity of the 8(a) firm selected for negotiation. Generally, the SBA will accept a contracting activity's recommended source.

(c) If the acquisition is accepted for competition—(1) as a local buy requirement, the SBA will advise as to which of the SBA districts or regions the competition is restricted and provide the list of the 8(a) firms in those districts or regions which are eligible for the designated SIC code; or (2) as a national buy requirement, the SBA, if requested by the contracting activity, will identify at least two eligible sources and the contracting officer, in coordination with the small business specialist, will augment the source list based on results of the synopsis (see 5.205(f)) and other available information. The SBA will advise of any program participation stage restrictions. The SBA may limit competition to 8(a) concerns in the developmental stage of program participation; may limit competition to 8(a) concerns in

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inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small and disadvantaged business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in (c)(3) below are applicable. The contracting officer may vary the terms of the clause as specified in (c)(2) below.

(2) Various approaches may be used in the development of small and small disadvantaged business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria (see (c)(3) below). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in (c)(2) above, the contracting officer may include small and small disadvantaged business subcontracting as one of the factors to be considered in determining the award-fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.

(a) Upon receipt of the contracting agency's offer, the SBA will determine whether to accept the requirement for the 8(a) Program. The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 15 working days of receipt of the offer, unless the SBA requests, and the contracting agency grants, an extension.

(b) If the acquisition is accepted as a sole source, the SBA will advise the contracting activity of the 8(a) firm selected for negotiation. Generally, the SBA will accept a contracting activity's recommended source.

(c) If the acquisition is accepted for competition—(1) as a local buy requirement, the SBA will advise as to which of the SBA districts or regions the competition is restricted and provide the list of the 8(a) firms in those districts or regions which are eligible for the designated SIC code; or (2) as a national buy requirement, the SBA, if requested by the contracting activity, will identify at least two eligible sources and the contracting officer, in coordination with the small business specialist, will augment the source list based on results of the synopsis (see 5.205(f)) and other available information. The SBA will advise of any program participation stage restrictions. The SBA may limit competition to 8(a) concerns in the developmental stage of program participation; may limit competition to 8(a) concerns in

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the transitional stage; or may permit competition among firms in either stage.	the transitional stage; or may permit competition among firms in either stage.
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## 19.902 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>To encourage the use of women-owned small businesses in subcontracting, the contracting officer shall insert the clause at 52.219-13, Utilization of Women-Owned Small Businesses, in solicitations and contracts when the contract amount is expected to exceed the <b>simplified acquisition threshold</b>, except—</p> <p>(a) Contracts that, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; or</p> <p>(b) Contracts for personal services.</p>	<p>To encourage the use of women-owned small businesses in subcontracting, the contracting officer shall insert the clause at 52.219-13, Utilization of Women-Owned Small Businesses, in solicitations and contracts when the contract amount is expected to exceed the <del>small purchase limitation</del>, except—</p> <p>(a) Contracts that, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; or</p> <p>(b) Contracts for personal services.</p>



## 19.1006 Procedures.

<i>Interim</i>	<i>Prior</i>
<p>(a) General.</p> <p>(1) All solicitations shall include the applicable SIC code and size standards.</p> <p>(2) The face of each award made pursuant to the program shall contain a statement that the award is being issued pursuant to the Small Business Competitiveness Demonstration Program.</p> <p>(b) Designated industry groups.</p> <p>(1) Solicitations for acquisitions in any of the four designated industry groups issued from January 1, 1989, through September 30, 1996, that have an anticipated dollar value greater than \$25,000 shall not be considered for small business set-asides under Subpart 19.5 (however, see subparagraphs (b)(2) and (c)(1) of this section). Acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) program (see Subpart 19.8).</p> <p>(2) Agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational unit(s) that failed to meet the small business participation goal. [FAC 90-23]</p> <p>(c) Emerging small business set-aside.</p> <p>(1) All acquisitions in the four designated industry groups with an estimated value equal to or less than the emerging small business reserve amount established by the Office of Federal Procurement Policy shall be set aside for ESB's; provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESB's that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer shall—</p> <p>(i) For acquisitions \$25,000 or less, proceed in accordance with 13.105 or Subpart 19.5; or</p> <p>(ii) For acquisitions over \$25,000, proceed in accordance with paragraph (b) of this section.</p> <p>(2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer shall make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer shall cancel the ESB set-aside and proceed in accordance with paragraph (c)(1) (i) or (ii) of this section.</p> <p>(3) When using other than <b>simplified acquisitions</b> procedures for ESB set-asides, the clause at 52.219-14, Limitations on Subcontracting, shall be placed in all solicitations and resulting contracts.</p> <p>(d) To expand small business participation in the targeted industry categories, each participating</p>	<p>(a) General.</p> <p>(1) All solicitations shall include the applicable SIC code and size standards.</p> <p>(2) The face of each award made pursuant to the program shall contain a statement that the award is being issued pursuant to the Small Business Competitiveness Demonstration Program.</p> <p>(b) Designated industry groups.</p> <p>(1) Solicitations for acquisitions in any of the four designated industry groups issued from January 1, 1989, through September 30, 1996, that have an anticipated dollar value greater than \$25,000 shall not be considered for small business set-asides under Subpart 19.5 (however, see subparagraphs (b)(2) and (c)(1) of this section). Acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) program (see Subpart 19.8).</p> <p>(2) Agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational unit(s) that failed to meet the small business participation goal. [FAC 90-23]</p> <p>(c) Emerging small business set-aside.</p> <p>(1) All acquisitions in the four designated industry groups with an estimated value equal to or less than the emerging small business reserve amount established by the Office of Federal Procurement Policy shall be set aside for ESB's; provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESB's that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer shall—</p> <p>(i) For acquisitions \$25,000 or less, proceed in accordance with 13.105 or Subpart 19.5; or</p> <p>(ii) For acquisitions over \$25,000, proceed in accordance with paragraph (b) of this section.</p> <p>(2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer shall make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer shall cancel the ESB set-aside and proceed in accordance with paragraph (c)(1) (i) or (ii) of this section.</p> <p>(3) When using other than <del>small purchase</del> procedures for ESB set-asides, the clause at 52.219-14, Limitations on Subcontracting, shall be placed in all solicitations and resulting contracts.</p> <p>(d) To expand small business participation in the targeted industry categories, each participating</p>

agency will develop and implement a time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be considered. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability.	agency will develop and implement a time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be considered. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability.
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## PART 20—LABOR SURPLUS AREA CONCERNS

### 20.103 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>(a) In contracts not set aside for LSA concerns, the offeror's status as an LSA concern may affect entitlement to award in the case of tie offers or evaluation in accordance with the Buy American Act. Therefore, offerors shall be afforded an opportunity to establish status as LSA concerns.</p> <p>(b) The contracting officer shall insert the clause at 52.220-1, Preference for Labor Surplus Area Concerns, in solicitations and contracts that (1) exceed the <b>simplified acquisition threshold in 13.101</b> and (2) are not set aside for LSA concerns.</p>	<p>(a) In contracts not set aside for LSA concerns, the offeror's status as an LSA concern may affect entitlement to award in the case of tie offers or evaluation in accordance with the Buy American Act. Therefore, offerors shall be afforded an opportunity to establish status as LSA concerns.</p> <p>(b) The contracting officer shall insert the clause at 52.220-1, Preference for Labor Surplus Area Concerns, in solicitations and contracts that (1) exceed the <del>appropriate small purchase limitation in Part 13</del> and (2) are not set aside for LSA concerns.</p>

### 20.104 Specific policies.

<i>Interim</i>	<i>Prior</i>
<p>When a proposed contract is estimated to exceed the <b>simplified acquisition threshold in 13.101</b>, the agency shall—</p> <p>(a) Set aside the acquisition as provided in Subpart 20.2;</p> <p>(b) Promptly disseminate available publications and information that identify LSA's to acquisition personnel;</p> <p>(c) Consider Department of Labor classifications of LSA's as conclusive for each contracting action;</p> <p>(d) Give LSA concerns, which are on appropriate solicitation lists, the opportunity to submit offers on any acquisition for which they are qualified, unless the acquisition is otherwise restricted (e.g., total small business set-aside);</p> <p>(e) Solicit all prospective LSA concerns, when less than a complete solicitation list is used;</p>	<p>When a proposed contract is estimated to exceed the <del>appropriate small purchase limitation in Part 13</del>, the agency shall—</p> <p>(a) Set aside the acquisition as provided in Subpart 20.2;</p> <p>(b) Promptly disseminate available publications and information that identify LSA's to acquisition personnel;</p> <p>(c) Consider Department of Labor classifications of LSA's as conclusive for each contracting action;</p> <p>(d) Give LSA concerns, which are on appropriate solicitation lists, the opportunity to submit offers on any acquisition for which they are qualified, unless the acquisition is otherwise restricted (e.g., total small business set-aside);</p> <p>(e) Solicit all prospective LSA concerns, when less than a complete solicitation list is used;</p>

<p>(f) Give preference to LSA concerns as prescribed in 14.407-6, when equal low bids are received;</p> <p>(g) Encourage subcontracting with LSA concerns (see Subpart 20.3);</p> <p>(h) Assist depressed industries (see 20.105);</p> <p>(i) Cooperate with the Departments of Labor and Commerce, the Small Business Administration, and the Federal Emergency Management Agency (FEMA) to achieve the objectives of this Part 20; and</p> <p>(j) See 25.404 regarding purchases from qualifying countries where LSA set-asides are involved.</p>	<p>(f) Give preference to LSA concerns as prescribed in 14.407-6, when equal low bids are received;</p> <p>(g) Encourage subcontracting with LSA concerns (see Subpart 20.3);</p> <p>(h) Assist depressed industries (see 20.105);</p> <p>(i) Cooperate with the Departments of Labor and Commerce, the Small Business Administration, and the Federal Emergency Management Agency (FEMA) to achieve the objectives of this Part 20; and</p> <p>(j) See 25.404 regarding purchases from qualifying countries where LSA set-asides are involved.</p>
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## 20.202 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.220-2, Notice of Total Labor Surplus Area Set-Aside, in solicitations and contracts estimated to exceed the <b>simplified acquisition threshold in 13.101</b> that are totally set aside for LSA concerns.</p>	<p>The contracting officer shall insert the clause at 52.220-2, Notice of Total Labor Surplus Area Set-Aside, in solicitations and contracts estimated to exceed the <del>appropriate small purchase limitation in Part 13</del> that are totally set aside for LSA concerns.</p>

## 20.301 General

<i>Interim</i>	<i>Prior</i>
<p>(a) In contracts that exceed the <b>simplified acquisition threshold in 13.101</b> but do not exceed \$500,000, contractors are required to use their best efforts to subcontract with LSA concerns when such subcontracting is (1) consistent with the efficient performance of the contract and (2) at prices no higher than are obtainable elsewhere.</p> <p>(b) In contracts that may exceed \$500,000, contractors are required to take affirmative actions to subcontract with LSA concerns when such subcontracting is (1) consistent with efficient performance of the contract and (2) at prices no higher than are obtainable elsewhere. Contractors are also required to impose similar responsibilities on major subcontractors.</p>	<p>(a) In contracts that exceed the <del>appropriate small purchase limitation in Part 13</del> but do not exceed \$500,000, contractors are required to use their best efforts to subcontract with LSA concerns when such subcontracting is (1) consistent with the efficient performance of the contract and (2) at prices no higher than are obtainable elsewhere.</p> <p>(b) In contracts that may exceed \$500,000, contractors are required to take affirmative actions to subcontract with LSA concerns when such subcontracting is (1) consistent with efficient performance of the contract and (2) at prices no higher than are obtainable elsewhere. Contractors are also required to impose similar responsibilities on major subcontractors.</p>

## 20.302 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.220-3, Utilization of Labor Surplus Area Concerns, in solicitations and contracts, when it is estimated that the contract will exceed the <b>simplified acquisition threshold in 13.101</b>, except—</p> <p>(1) Contracts with foreign contractors that, including all related subcontracts, are to be performed entirely outside the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands;</p> <p>(2) Contracts for services that are personal in nature; and</p> <p>(3) Contracts with the petroleum and petroleum products industry.</p> <p>(b) The contracting officer shall insert the clause at 52.220-4, Labor Surplus Area Subcontracting Program, in solicitations and contracts that (1) may exceed \$500,000, (2) contain the clause at 52.220-3, Utilization of Labor Surplus Area Concerns, and (3) in the opinion of the contracting officer, offer substantial subcontracting possibilities. In addition, the contracting officer shall urge contractors that will receive negotiated contracts that may not exceed \$500,000 but that meet the criteria in (2) and (3) above, to accept the clause at 52.220-4.</p>	<p>(a) The contracting officer shall insert the clause at 52.220-3, Utilization of Labor Surplus Area Concerns, in solicitations and contracts, when it is estimated that the contract will exceed the <del>appropriate small purchase limitation in Part 13</del>, except—</p> <p>(1) Contracts with foreign contractors that, including all related subcontracts, are to be performed entirely outside the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands;</p> <p>(2) Contracts for services that are personal in nature; and</p> <p>(3) Contracts with the petroleum and petroleum products industry.</p> <p>(b) The contracting officer shall insert the clause at 52.220-4, Labor Surplus Area Subcontracting Program, in solicitations and contracts that (1) may exceed \$500,000, (2) contain the clause at 52.220-3, Utilization of Labor Surplus Area Concerns, and (3) in the opinion of the contracting officer, offer substantial subcontracting possibilities. In addition, the contracting officer shall urge contractors that will receive negotiated contracts that may not exceed \$500,000 but that meet the criteria in (2) and (3) above, to accept the clause at 52.220-4.</p>

## PART 22— APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### 22.202 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.222-3, Convict Labor, in solicitations and contracts <b>above the micro-purchase threshold</b>, when the contract is to be performed in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands; unless—</p> <p>(a) The contract will be subject to the Walsh-Healey Public Contracts Act (see Subpart 22.6), which contains a separate prohibition against the employment of convict labor;</p> <p>(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see Subpart 8.6); or</p> <p>(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.</p>	<p>The contracting officer shall insert the clause at 52.222-3, Convict Labor, in solicitations and contracts when the contract is to be performed in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands; unless—</p> <p>(a) The contract will be subject to the Walsh-Healey Public Contracts Act (see Subpart 22.6), which contains a separate prohibition against the employment of convict labor;</p> <p>(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see Subpart 8.6); or</p> <p>(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.</p>

### 22.305 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, the contracting officer shall not include the clause in solicitations and contracts if it is contemplated that the contract will be in one of the following categories:</p> <p>(a) <b>Contracts at or below the simplified acquisition threshold.</b></p> <p>(b) Contracts for supplies, materials, or articles ordinarily available in the open market.</p>	<p>The contracting officer shall insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering <del>and blanket purchase</del> agreements) when the contract may require or involve the employment of laborers or mechanics. However, the contracting officer shall not include the clause in solicitations and contracts if it is contemplated that the contract will be in one of the following categories:</p> <p>(a) <del>Construction contracts of \$2,000 or less.</del></p> <p>(b) <del>Contracts, other than construction contracts, of \$2,500 or less. Indefinite quantity or requirements contracts, including basic ordering agreements and blanket purchase agreements are exempt, if it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed \$2,500. A determination shall be made annually hereafter if the contract or agreement is extended and the contract or agreement modified if necessary.</del></p>

<p>(c) Contracts for transportation by land, air, or water, or for the transmission of intelligence.</p> <p>(d) Contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a State, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331), American Samoa, Guam, Wake Island, and Johnston Island.</p> <p>(e) Contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see Subpart 22.6).</p> <p>(f) Contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics.</p> <p>(g) Any other contracts exempt under regulations of the Secretary of Labor (29 CFR 5.15).</p>	<p>(e) Contracts for supplies, materials, or articles ordinarily available in the open market.</p> <p>(d) Contracts for transportation by land, air, or water, or for the transmission of intelligence.</p> <p>(e) Contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a State, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331), American Samoa, Guam, Wake Island, and Johnston Island.</p> <p>(f) Contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see Subpart 22.6).</p> <p>(g) Contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics.</p> <p>(h) Any other contracts exempt under regulations of the Secretary of Labor (29 CFR 5.15).</p>
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22.1006 Contract clauses.	22.1006 <del>Clauses for contracts over \$2,500.</del>
<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.222-41, Service Contract Act of 1965, as amended, in solicitations and contracts if the contract is subject to the Act and is (1) for over \$2,500 or (2) for an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less.</p> <p>(b) The contracting officer shall insert the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over \$2,500 and the Act is applicable. (See 22.1016.)</p> <p>(c)(1) The contracting officer shall insert the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, and is a multiple year contract or is a contract with options to renew which exceeds the <b>simplified acquisition threshold</b>. The clause may be used in contracts that do not exceed the <b>simplified acquisition threshold</b>. The clause at 52.222-</p>	<p>(a) The contracting officer shall insert the clause at 52.222-41, Service Contract Act of 1965, as amended, in solicitations and contracts if the contract is subject to the Act and is (1) for over \$2,500 or (2) for an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less.</p> <p>(b) The contracting officer shall insert the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over \$2,500 and the Act is applicable. (See 22.1016.)</p> <p>(c)(1) The contracting officer shall insert the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, and is a multiple year contract or is a contract with options to renew which exceeds the <del>small purchase limitation</del>. The clause may be used in contracts that do not exceed the <del>small purchase limitation</del>. The clause at 52.222-43, Fair Labor Standards Act and</p>

43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor’s collective bargaining agreement in effect during this contract’s preceding contract period (see 22.1002-2 and 22.1002-3). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor’s increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at 52.222-43 (subparagraphs (c)(1), (2) and (3)), or 52.222-44 (subparagraphs (b)(1) and (2)). (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor actually paid \$4.10. The new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

(2) The contracting officer shall insert the clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, exceeds the **simplified acquisition threshold**, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the **simplified acquisition threshold**. The clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see 22.1002-2 and 22.1002-3).

(3) The clauses prescribed in paragraph 22.1006(c)(1) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in 16.203-4(d) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph 22.1006(c).

(d) The contracting officer shall insert the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits, if—

- (1) The clause at 52.222-41 applies;
- (2) The contract resulting from the solicitation succeeds a contract for substantially the same services to be performed in the same locality;

Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor’s collective bargaining agreement in effect during this contract’s preceding contract period (see 22.1002-2 and 22.1002-3). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor’s increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at 52.222-43 (subparagraphs (c)(1), (2) and (3)), or 52.222-44 (subparagraphs (b)(1) and (2)). (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor actually paid \$4.10. The new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

(2) The contracting officer shall insert the clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, exceeds the ~~small purchase limitation~~, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the ~~small purchase limitation~~. The clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see 22.1002-2 and 22.1002-3).

(3) The clauses prescribed in paragraph 22.1006(c)(1) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in 16.203-4(d) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph 22.1006(c).

(d) The contracting officer shall insert the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits, if—

- (1) The clause at 52.222-41 applies;
- (2) The contract resulting from the solicitation succeeds a contract for substantially the same services to be performed in the same locality;

<p>(3) The incumbent contractor has negotiated or is negotiating a collective bargaining agreement with some or all of its service employees; and</p> <p>(4) All applicable Department of Labor wage determinations have been requested but not received.</p> <p>(e)(1) The contracting officer shall insert the clause at 52.222-48, Exemption from Application of Service Contract Act Provisions, in any solicitation and resulting contract calling for the maintenance, calibration, and/or repair of ADP, scientific and medical, and office and business equipment if the contracting officer determines that the resultant contract may be exempt from Service Contract Act coverage as described at 22.1003-4(b)(4).</p> <p>(2) If the successful offeror does not certify that the exemption applies, the contracting officer shall not insert the clause at 52.222-48 and instead shall insert in the contract (i) the applicable Service Contract Act clause(s) and (ii) the appropriate Department of Labor wage determination if the contract exceeds \$2,500.</p> <p>(f) The contracting officer shall insert the clause at 52.222-49, Service Contract Act—Place of Performance Unknown, if using the procedures prescribed in 22.1009-4.</p>	<p>(3) The incumbent contractor has negotiated or is negotiating a collective bargaining agreement with some or all of its service employees; and</p> <p>(4) All applicable Department of Labor wage determinations have been requested but not received.</p> <p>(e)(1) The contracting officer shall insert the clause at 52.222-48, Exemption from Application of Service Contract Act Provisions, in any solicitation and resulting contract calling for the maintenance, calibration, and/or repair of ADP, scientific and medical, and office and business equipment if the contracting officer determines that the resultant contract may be exempt from Service Contract Act coverage as described at 22.1003-4(b)(4).</p> <p>(2) If the successful offeror does not certify that the exemption applies, the contracting officer shall not insert the clause at 52.222-48 and instead shall insert in the contract (i) the applicable Service Contract Act clause(s) and (ii) the appropriate Department of Labor wage determination if the contract exceeds \$2,500.</p> <p>(f) The contracting officer shall insert the clause at 52.222-49, Service Contract Act—Place of Performance Unknown, if using the procedures prescribed in 22.1009-4.</p>
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## PART 23 — ENVIRONMENT CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

### 23.101 Applicability.

<i>Interim</i>	<i>Prior</i>
This subpart does not apply to <b>contracts below the simplified acquisition threshold</b> or to the use of facilities outside the United States. (“United States,” as used in this subpart, includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.)	This subpart does not apply to <del>small purchases</del> or to the use of facilities outside the United States. (“United States,” as used in this subpart, includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.)

### 23.501 Applicability.

<i>Interim</i>	<i>Prior</i>
This subpart applies to all contracts including contracts with 8(a) contractors under FAR Subpart 19.8 and modi-	This subpart applies to all contracts including contracts with 8(a) contractors under FAR Subpart 19.8 and



<p>fications which require a justification and approval (see Subpart 6.3) except—</p> <p>(a) <b>Contracts at or below the simplified acquisition threshold;</b> however, the requirements of this subpart shall apply to contracts of any value if the contract is awarded to an individual;</p> <p>(b) Contracts or those parts of contracts that are to be performed outside of the United States, its territories, and its possessions;</p> <p>(c) Contracts by law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or</p> <p>(d) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.</p>	<p>modifications which require a justification and approval (see Subpart 6.3) except—</p> <p>(a) <del>Contracts valued below \$25,000;</del> however, the requirements of this subpart shall apply to contracts of any dollar value if the contract is awarded to an individual;</p> <p>(b) Contracts or those parts of contracts that are to be performed outside of the United States, its territories, and its possessions;</p> <p>(c) Contracts by law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or</p> <p>(d) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.</p>
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## 23.504 Policy.

<i>Interim</i>	<i>Prior</i>
<p>(a) No offeror other than an individual shall be considered a responsible source (see 9.104-1) for a contract that <b>exceeds the simplified acquisition threshold</b>, unless it has certified, pursuant to 52.223-5, Certification Regarding a Drug-Free Workplace, that it will provide a drug-free workplace by—</p> <p>(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;</p> <p>(2) Establishing an ongoing drug-free awareness program to inform its employees about—</p> <p>(i) The dangers of drug abuse in the workplace;</p> <p>(ii) The contractor's policy of maintaining a drug-free workplace;</p> <p>(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and</p> <p>(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;</p> <p>(3) Providing all employees engaged in performance of this contract with a copy of the statement required by subparagraph (a)(1) of this section;</p> <p>(4) Notifying all employees in writing in the statement required by subparagraph (a)(1) of this section, that as a condition of employment on a covered</p>	<p>(a) No offeror other than an individual shall be considered a responsible source (see 9.104-1<del>(g)</del>) for a contract that <del>equals or exceeds</del> \$25,000, unless it has certified, pursuant to 52.223-5, Certification Regarding A Drug-Free Workplace, that it will provide a drug-free workplace by—</p> <p>(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;</p> <p>(2) Establishing an ongoing drug-free awareness program to inform its employees about—</p> <p>(i) The dangers of drug abuse in the workplace;</p> <p>(ii) The contractor's policy of maintaining a drug-free workplace;</p> <p>(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and</p> <p>(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;</p> <p>(3) Providing all employees engaged in performance of this contract with a copy of the statement required by subparagraph (a)(1) of this section;</p> <p>(4) Notifying all employees in writing in the statement required by subparagraph (a)(1) of this section, that as a condition of employment on a covered</p>

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contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notifying the contracting officer in writing within 10 calendar days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within calendar 30 days after receiving notice under subparagraph (a)(4) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (a)(1) through (a)(6) of this section.

(b) No individual shall be awarded a contract of any dollar value unless that individual certifies, pursuant to the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, that the individual will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract.

(c) Failure of the offeror to provide the certification required by paragraph (a) or (b) of this section renders an offeror unqualified and ineligible for award. (See 9.104-1(g) and 19.602-1(a)(2)(i).)

(d) For a contract of 30 days or more performance duration, the contractor shall comply with the provisions of paragraph (a) of this section within 30 calendar days after contract award, unless the contracting officer agrees in writing that circumstances warrant a longer period of time to comply. Before granting such an extension, the contracting officer shall consider such factors as the number of contractor employees at the worksite, whether the contractor has or must develop a drug-free workplace program, and the number of contractor worksites. For contracts of less than 30 days performance duration, the contractor shall comply with the provisions of paragraph (a) of this section as soon as possible, but in any case, by a date prior to when per-

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contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notifying the contracting officer in writing within 10 calendar days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within calendar 30 days after receiving notice under subparagraph (a)(4) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (a)(1) through (a)(6) of this section.

(b) No individual shall be awarded a contract of any dollar value unless that individual certifies, pursuant to the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, that the individual will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract.

(c) Failure of the offeror to provide the certification required by paragraph (a) or (b) of this section renders an offeror unqualified and ineligible for award. (See 9.104-1(g) and 19.602-1(a)(2)(i).)

(d) For a contract of 30 days or more performance duration, the contractor shall comply with the provisions of paragraph (a) of this section within 30 calendar days after contract award, unless the contracting officer agrees in writing that circumstances warrant a longer period of time to comply. Before granting such an extension, the contracting officer shall consider such factors as the number of contractor employees at the worksite, whether the contractor has or must develop a drug-free workplace program, and the number of contractor worksites. For contracts of less than 30 days performance duration, the contractor shall comply with the provisions of paragraph (a) of this section as soon as possible, but in any case, by a date prior to when performance is expected to be completed.

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formance is expected to be completed.

### 23.505 Solicitation provision and contract clause.

<i>Interim</i>	<i>Prior</i>
<p>(a) Contracting officers shall insert the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, except as provided in paragraph (c) of this section, in solicitations—</p> <p>(1) Of any dollar value if the contract is expected to be awarded to an individual; or</p> <p>(2) Expected to <b>exceed the simplified acquisition threshold</b> if the contract is expected to be awarded to other than an individual; or</p> <p>(b) Contracting officers shall insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts described in paragraph (a) of this section unless the conditions of paragraph (c) of this section apply.</p> <p>(c) Contracting officers shall not insert the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, or the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts, if—</p> <p>(1) The resultant contract is to be performed entirely outside of the United States, its territories, and its possessions;</p> <p>(2) The resultant contract is for law enforcement agencies, and the head of the law enforcement agency or designee involved determines that application of the requirements of this subpart would be inappropriate inconnection with the law enforcement agency's undercover operations; or</p> <p>(3) Inclusion of these requirements would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.</p>	<p>(a) Contracting officers shall insert the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, except as provided in paragraph (c) of this section, in solicitations—</p> <p>(1) Of any dollar value if the contract is expected to be awarded to an individual; or</p> <p>(2) Expected to <del>equal or exceed \$25,000</del>, if the contract is expected to be awarded to other than an individual.</p> <p>(b) Contracting officers shall insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts described in paragraph (a) of this section unless the conditions of paragraph (c) of this section apply.</p> <p>(c) Contracting officers shall not insert the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, or the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts, if—</p> <p>(1) The resultant contract is to be performed entirely outside of the United States, its territories, and its possessions;</p> <p>(2) The resultant contract is for law enforcement agencies, and the head of the law enforcement agency or designee involved determines that application of the requirements of this subpart would be inappropriate inconnection with the law enforcement agency's undercover operations; or</p> <p>(3) Inclusion of these requirements would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.</p>

## PART 25 — FOREIGN ACQUISITION

### 25.302 Policy.

<i>Interim</i>	<i>Prior</i>
<p>(a) The Balance of Payments Program is an interim measure imposed to alleviate the impact of Government expenditures on the Nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the Buy American Act applies only to acquisitions for use inside the United States, while the Balance of Payments Program applies to acquisitions for use outside the United States.</p> <p>(b) Foreign end products or services may be acquired for use outside the United States if any of the following conditions are met:</p> <ol style="list-style-type: none"> <li>(1) The estimated cost of the product or service <b>is at or below the simplified acquisition threshold in Part 13.</b></li> <li>(2) Perishable subsistence items are required and the agency head, or a designee, determines that delivery from the United States would significantly impair their quality at the point of consumption.</li> <li>(3) The agency head, or a designee, determines that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forgo filling it or to provide a domestic substitute (see 25.108).</li> <li>(4) The acquisition is for ice, books, utilities, communications, and other materials or services that, by their nature or as a practical matter, can only be acquired or performed in the country concerned and a U.S. Government capability does not exist.</li> <li>(5) Subsistence items are required specifically for resale in overseas commissary stores.</li> <li>(6) The acquisition of foreign end products or services is required by a treaty or executive agreement between governments.</li> <li>(7) Petroleum supplies and their by-products as listed and defined in 25.108 are required.</li> <li>(8) The end products or services are paid for with excess or near-excess foreign currencies (see 25.304).</li> <li>(9) The end products or services are mined, produced, or manufactured in Panama and are required by and of the use of United States Forces in Panama.</li> </ol> <p>(c) Contracts shall require use of domestic construction materials (see 25.201) for construction, repair, or maintenance of real property outside the United States, except when the cost of these materials (including transportation and handling costs) exceeds the cost of foreign construction materials by</p>	<p>(a) The Balance of Payments Program is an interim measure imposed to alleviate the impact of Government expenditures on the Nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the Buy American Act applies only to acquisitions for use inside the United States, while the Balance of Payments Program applies to acquisitions for use outside the United States.</p> <p>(b) Foreign end products or services may be acquired for use outside the United States if any of the following conditions are met:</p> <ol style="list-style-type: none"> <li>(1) The estimated cost of the product or service <del>does not exceed the appropriate small purchase limitation in Part 13.</del></li> <li>(2) Perishable subsistence items are required and the agency head, or a designee, determines that delivery from the United States would significantly impair their quality at the point of consumption.</li> <li>(3) The agency head, or a designee, determines that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forgo filling it or to provide a domestic substitute (see 25.108).</li> <li>(4) The acquisition is for ice, books, utilities, communications, and other materials or services that, by their nature or as a practical matter, can only be acquired or performed in the country concerned and a U.S. Government capability does not exist.</li> <li>(5) Subsistence items are required specifically for resale in overseas commissary stores.</li> <li>(6) The acquisition of foreign end products or services is required by a treaty or executive agreement between governments.</li> <li>(7) Petroleum supplies and their by-products as listed and defined in 25.108 are required.</li> <li>(8) The end products or services are paid for with excess or near-excess foreign currencies (see 25.304).</li> <li>(9) The end products or services are mined, produced, or manufactured in Panama and are required by and of the use of United States Forces in Panama.</li> </ol> <p>(c) Contracts shall require use of domestic construction materials (see 25.201) for construction, repair, or maintenance of real property outside the United States, except when the cost of these materials (including transportation and handling costs) exceeds the cost of foreign construction materials by more than 50 percent. A differen-</p>

more than 50 percent. A differential greater than 50 percent may be used when specifically authorized by the agency head or a designee.	tial greater than 50 percent may be used when specifically authorized by the agency head or a designee.
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### 25.703 Exceptions.

<i>Interim</i>	<i>Prior</i>
In unusual situations, supplies and services restricted by 25.702(a) may be acquired for use outside the United States, its possessions, or Puerto Rico. Examples of an unusual situation are an emergency or when the supplies or services are not available from another source and a substitute is not acceptable. The approval level for this exception is the contracting officer for <b>acquisitions at or below the simplified acquisition threshold</b> unless otherwise provided by agency <b>procedures. In the case of contracts in excess of the simplified acquisition threshold, the approval level is the agency head.</b> A copy of the written approval shall be furnished to the contractor.	In unusual situations, supplies and services restricted by 25.702(a) may be acquired for use outside the United States, its possessions, or Puerto Rico. Examples of an unusual situation are an emergency or when the supplies or services are not available from another source and a substitute is not acceptable. The approval level for this exception is the contracting officer for <del>small purchases</del> , unless otherwise provided by the agency in the case, <del>or the agency head for other than small purchases.</del> A copy of the written approval shall be furnished to the contractor.

## PART 27—PATENTS, DATA, AND COPYRIGHTS

### 27.201-2 Clauses on authorization and consent.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52-227-1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when <b>using simplified acquisition procedures</b> or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when <b>simplified acquisition procedures are used</b>, it may be used with them.</p> <p>(b) The contracting officer shall insert the clause with its Alternate I in all R&amp;D solicitations and contracts (including those for construction and architect-engineer services calling exclusively for R&amp;D work or exclusively for experimental work), unless both complete</p>	<p>(a) The contracting officer shall insert the clause at 52.227-1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when <del>small purchase procedures apply</del> or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when <del>small purchase procedures apply</del>, it may be used with them.</p> <p>(b) The contracting officer shall insert the clause with its Alternate I in all R&amp;D solicitations and contracts (including those for construction and architect-engineer services calling exclusively for R&amp;D work or exclu-</p>

<p>performance and delivery are outside the United States, its possessions, and Puerto Rico. When a proposed contract involves both R&amp;D work and supplies or services, and the R&amp;D work is the primary purpose of the contract, the contracting officer shall use this alternate. In all other proposed contracts involving both R&amp;D work and supplies or services, the contracting officer shall use the basic clause. Also, when a proposed contract involves either R&amp;D or supplies and materials, in addition to construction or architect-engineer work, the contracting officer shall use the basic clause.</p> <p>(c) If the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body, the contracting officer shall use the clause with its Alternate II.</p>	<p>sively for experimental work), unless both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. When a proposed contract involves both R&amp;D work and supplies or services, and the R&amp;D work is the primary purpose of the contract, the contracting officer shall use this alternate. In all other proposed contracts involving both R&amp;D work and supplies or services, the contracting officer shall use the basic clause. Also, when a proposed contract involves either R&amp;D or supplies and materials, in addition to construction or architect-engineer work, the contracting officer shall use the basic clause.</p> <p>(c) If the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body, the contracting officer shall use the clause with its Alternate II.</p>
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## 27.202-2 Clause on notice and assistance.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the <b>simplified acquisition threshold</b>, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.</p>	<p>The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the <del>dollar limit set forth at 13,000</del>, except when <del>small purchase procedures apply or both</del> complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.</p>

## 27.203-1 General.

<i>Interim</i>	<i>Prior</i>
<p>(a) To the extent set forth in this section, the Government requires reimbursement for liability for patent infringement arising out of or resulting from performing construction contracts or contracts for supplies or services that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or that are the same as such supplies or services with relatively minor modifications. Appropriate clauses for indemnification of the Government are prescribed in the following subsections.</p> <p>(b) A patent indemnity clause shall not be used in the</p>	<p>(a) To the extent set forth in this section, the Government requires reimbursement for liability for patent infringement arising out of or resulting from performing construction contracts or contracts for supplies or services that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or that are the same as such supplies or services with relatively minor modifications. Appropriate clauses for indemnification of the Government are prescribed in the following subsections.</p> <p>(b) A patent indemnity clause shall not be used in the</p>

<p>following situations:</p> <p>(1) When the clause at 52.227-1, Authorization and Consent, with its Alternate I, is included in the contract, except that in contracts calling also for supplies of the kind described in paragraph (a) above, a patent indemnity clause may be used solely with respect to such supplies.</p> <p>(2) When the contract is for supplies or services (or such items with relatively minor modifications) that clearly are not or have not been sold or offered for sale by any supplier to the public in the commercial open market. However, a patent indemnity clause may be included in (i) sealed bid contracts to obtain an indemnity regarding specific components, spare parts, or services so sold or offered for sale (see 27.203-2(b) below), and (ii) contracts to be awarded (either by sealed bidding or negotiation) if a patent owner contends that the acquisition would result in patent infringement and the prospective contractor, after responding to a solicitation that did not contain an indemnity clause, is willing to indemnify the Government against such infringement either (A) without increase in price on the basis that the patent is invalid or not infringed, or (B) for other good reasons.</p> <p>(3) When both performance and delivery are to be outside the United States, its possessions, and Puerto Rico, unless the contract indicates that the supplies or other deliverables are ultimately to be shipped into one of those areas.</p> <p>(4) When the contract is awarded using simplified acquisition procedures.</p> <p>(5) When the contract is solely for architect-engineer work (see Part 36).</p>	<p>following situations:</p> <p>(1) When the clause at 52.227-1, Authorization and Consent, with its Alternate I, is included in the contract, except that in contracts calling also for supplies of the kind described in paragraph (a) above, a patent indemnity clause may be used solely with respect to such supplies.</p> <p>(2) When the contract is for supplies or services (or such items with relatively minor modifications) that clearly are not or have not been sold or offered for sale by any supplier to the public in the commercial open market. However, a patent indemnity clause may be included in (i) sealed bid contracts to obtain an indemnity regarding specific components, spare parts, or services so sold or offered for sale (see 27.203-2(b) below), and (ii) contracts to be awarded (either by sealed bidding or negotiation) if a patent owner contends that the acquisition would result in patent infringement and the prospective contractor, after responding to a solicitation that did not contain an indemnity clause, is willing to indemnify the Government against such infringement either (A) without increase in price on the basis that the patent is invalid or not infringed, or (B) for other good reasons.</p> <p>(3) When both performance and delivery are to be outside the United States, its possessions, and Puerto Rico, unless the contract indicates that the supplies or other deliverables are ultimately to be shipped into one of those areas.</p> <p>(4) When the contract is awarded by <del>small purchase</del> procedures.</p> <p>(5) When the contract is solely for architect-engineer work (see Part 36).</p>
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## PART 28—BONDS AND INSURANCE

### 28.103-2 Performance bonds.

<i>Interim</i>	<i>Prior</i>
<p>(a) Performance bonds may be required <b>for contracts exceeding the simplified acquisition threshold</b> when necessary to protect the Government's interest. The following situations may warrant a performance bond:</p> <p>(1) Government property or funds <del>are</del> to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged mate-</p>	<p>(a) Performance bonds may be required when necessary to protect the Government's interest. The following situations may warrant a performance bond:</p> <p>(1) Government property or funds <del>are</del> to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged mate-</p>

<p>rial).</p> <p>(2) A contractor sells assets to or merges with another concern, and the Government, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.</p> <p>(3) Substantial progress payments are made before delivery of end items starts.</p> <p>(4) Contracts are for dismantling, demolition, or removal of improvements.</p> <p>(b) When a performance bond is required, the solicitation shall contain the information in 28.102-3.</p> <p>(c) The Government may require additional performance bond protection when a contract price is increased.</p> <p>(d) The contracting officer must determine the contractor's responsibility (see Subpart 9.1) even though a bond has been or can be obtained.</p>	<p>rial).</p> <p>(2) A contractor sells assets to or merges with another concern, and the Government, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.</p> <p>(3) Substantial progress payments are made before delivery of end items starts.</p> <p>(4) Contracts are for dismantling, demolition, or removal of improvements.</p> <p>(b) When a performance bond is required, the solicitation shall contain the information in 28.102-3.</p> <p>(c) The Government may require additional performance bond protection when a contract price is increased.</p> <p>(d) The contracting officer must determine the contractor's responsibility (see Subpart 9.1) even though a bond has been or can be obtained.</p>
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### 28.310 Contract clause for work on a Government installation.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.228-5, Insurance—Work on a Government Installation, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount is expected to <b>exceed the simplified acquisition threshold</b> in Part 13, and the contract will require work on a Government installation, unless—</p> <p>(1) Only a small amount of work is required on the Government installation (e.g., a few brief visits per month); or</p> <p>(2) All work on the Government installation is to be performed outside the United States, its possessions, and Puerto Rico.</p> <p>(b) The contracting officer may insert the clause at 52.228-5 in solicitations and contracts described in (a)(1) and (2) above if it is in the Government's interest to do so.</p>	<p>(a) The contracting officer shall insert the clause at 52.228-5, Insurance—Work on a Government Installation, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount is expected to <del>be over the appropriate small purchase limitation</del> in Part 13, and the contract will require work on a Government installation, unless—</p> <p>(1) Only a small amount of work is required on the Government installation (e.g., a few brief visits per month); or</p> <p>(2) All work on the Government installation is to be performed outside the United States, its possessions, and Puerto Rico.</p> <p>(b) The contracting officer may insert the clause at 52.228-5 in solicitations and contracts described in (a)(1) and (2) above if it is in the Government's interest to do so.</p>



## PART 29—TAXES

### 29.401-3 Competitive contracts.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.229-3, Federal, State, and Local Taxes, in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico, when a fixed-price contract is <b>contemplated</b> and the contract is expected to exceed the <b>simplified acquisition threshold</b> in 13.000, unless the clause at 52.229-4, Federal State, and Local Taxes (Noncompetitive Contract), is included in the contract.	The contracting officer shall insert the clause at 52.229-3, Federal, State, and Local Taxes, in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico when a fixed-price contract is <del>contemplated</del> , and the contract is expected to exceed the <del>small purchase limitation</del> in 13.000, unless the clause at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), is included in the contract.

### 29.401-4 [Amended]

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), in fixed-price noncompetitive contracts when the contract exceeds the <b>simplified acquisition threshold</b> in 13.000 to be performed wholly or partly within the United States, its possessions, or Puerto Rico when satisfied that the contract price does not include contingencies for State and local taxes, and that, unless the clause is used, the contract price will include such contingencies.	The contracting officer shall insert the clause at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), in fixed-price noncompetitive contracts when the contract exceeds the <del>small purchase limitation</del> in 13.000 to be performed wholly or partly within the United States, its possessions, or Puerto Rico when satisfied that the contract price does not include contingencies for State and local taxes, and that, unless the clause is used, the contract price will include such contingencies.

## PART 32—CONTRACT FINANCING

### 32.617 Contract clause. [52.232-17 interest]

<i>Interim</i>	<i>Prior</i>
(a) The contracting officer shall insert the clause at 52.232-17, Interest, in solicitations and contracts, unless it is contemplated that the contract will be in one or more of the following categories: (1) <b>Contracts at or below the simplified acquisition threshold.</b> (2) Contracts with Government agencies. (3) Contracts with a State or local government or instrumentality. (4) Contracts with a foreign government or instrumentality.	(a) The contracting officer shall insert the clause at 52.232-17, Interest, in solicitations and contracts, unless it is contemplated that the contract will be in one or more of the following categories: (1) <del>Small purchases.</del> (2) Contracts with Government agencies. (3) Contracts with a State or local government or instrumentality. (4) Contracts with a foreign government or instrumentality.

<p>(5) Contracts without any provision for profit or fee with a nonprofit organization.</p> <p>(6) Contracts described in Subpart 5.5, Paid Advertisements.</p> <p>(7) Any other exceptions authorized under agency procedures.</p> <p>(b) The contracting officer may insert the clause at 52.232-17, Interest, in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified in 32.617(a).</p>	<p>(5) Contracts without any provision for profit or fee with a nonprofit organization.</p> <p>(6) Contracts described in Subpart 5.5, Paid Advertisements.</p> <p>(7) Any other exceptions authorized under agency procedures.</p> <p>(b) The contracting officer may insert the clause at 52.232-17, Interest, in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified in 32.617(a).</p>
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### 32.901 Applicability.

<i>Interim</i>	<i>Prior</i>
<p>This subpart applies to all Government contracts (including <b>contracts at or below the simplified acquisition threshold</b> as defined in Subpart 13.1), except contracts with payment terms and late payment penalties established by other governmental authority (e.g., tariffs).</p>	<p>This subpart applies to all Government contracts (including <del>small purchases</del> as defined in Subpart 13.1), except contracts with payment terms and late payment penalties established by other governmental authority (e.g., tariffs).</p>

### 32.908 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>(a) If the solicitation or contract contains the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, the contracting officer shall insert the clause at 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts.</p> <p>(b) The contracting officer shall insert the clause at 52.232-27, Prompt Payment for Construction Contracts, in all solicitations and contracts for construction (see Part 36).</p> <p>(c) The contracting officer shall insert the clause at 52.232-25, Prompt Payment, in all other solicitations and contracts (including <b>contracts at or below the simplified acquisition threshold in Part 13</b>), except as indicated in 32.901.</p> <p>(d) If payment may be made by electronic funds transfer, the contracting officer shall insert the clause at 52.232-28, Electronic Funds Transfer Payment Methods, in solicitations and contracts.</p>	<p>(a) If the solicitation or contract contains the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, the contracting officer shall insert the clause at 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts.</p> <p>(b) The contracting officer shall insert the clause at 52.232-27, Prompt Payment for Construction Contracts, in all solicitations and contracts for construction (see Part 36).</p> <p>(c) The contracting officer shall insert the clause at 52.232-25, Prompt Payment, in all other solicitations and contracts (including <del>small purchases as defined in Subpart 13.1</del>), except as indicated in 32.901.</p> <p>(d) If payment may be made by electronic funds transfer, the contracting officer shall insert the clause at 52.232-28, Electronic Funds Transfer Payment Methods, in solicitations and contracts.</p>

### 33.106[Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the provision at 52.233-2, Service of Protest, in solicitations for other than <b>simplified acquisition threshold</b>.</p> <p>(b) The contracting officer shall insert the clause at 52.233-3, Protest After Award, in all solicitations and contracts. If a cost reimbursement contract is contemplated, the contracting officer shall use the clause with its <i>Alternate I</i>.</p>	<p>(a) The contracting officer shall insert the provision at 52.233-2, Service of Protest, in solicitations for other than <del>small purchases</del>.</p> <p>(b) The contracting officer shall insert the clause at 52.233-3, Protest After Award, in all solicitations and contracts. If a cost reimbursement contract is contemplated, the contracting officer shall use the clause with its <i>Alternate I</i>.</p>

## PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

### 36.502 Differing site conditions.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.236-2, Differing Site Conditions, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b>. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <b>at or below the simplified acquisition threshold</b>.</p>	<p>The contracting officer shall insert the clause at 52.236-2, Differing Site Conditions, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del>. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <del>within the small purchase limitation</del>.</p>

### 36.503 Site investigation and conditions affecting the work.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.236-3, Site Investigation and Conditions Affecting the Work, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b>. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <b>at or below the simplified acquisition threshold</b>.</p>	<p>The contracting officer shall insert the clause at 52.236-3, Site Investigation and Conditions Affecting the Work, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del>. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <del>within the small purchase limitation</del>.</p>

### 36.506 Superintendence by the contractor.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-6, Superintendence by the Contractor, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b> . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <b>at or below the simplified acquisition threshold</b> .	The contracting officer shall insert the clause at 52.236-6, Superintendence by the Contractor, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del> . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <del>within the small purchase limitation</del> .

### 36.508 Other contracts.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-8, Other Contracts, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b> . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <b>at or below the simplified acquisition threshold</b> .	The contracting officer shall insert the clause at 52.236-8, Other Contracts, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del> . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <del>within the small purchase limitation</del> .

### 36.509 Protection of existing vegetation, structures, equipment, utilities, and improvements.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b> . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated	The contracting officer shall insert the clause at 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del> . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and

and the contract amount is expected to be <b>at or below the simplified acquisition threshold.</b>	the contract amount is expected to be <del>within the small purchase limitation.</del>
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### 36.510 Operations and Storage Areas.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-10, Operations and Storage Areas, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold.</b> The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <b>at or below the simplified acquisition threshold.</b>	The contracting officer shall insert the clause at 52.236-10, Operations and Storage Areas, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation.</del> The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <del>within the small purchase limitation.</del>

### 36.511 Use and possession prior to completion.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-11, Use and Possession Prior to Completion, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the <b>simplified acquisition threshold.</b> This clause may be inserted in solicitations and contracts when the contract amount is expected to be <b>at or below the simplified acquisition threshold.</b>	The contracting officer shall insert the clause at 52.236-11, Use and Possession Prior to Completion, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the <del>small purchase limitations.</del> This clause may be inserted in solicitations and contracts when the contract amount is expected to be <del>within the small purchase limitations.</del>

### 36.512 Cleaning up.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-12, Cleaning Up, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold.</b> The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <b>at or below the simplified acquisition threshold.</b>	The contracting officer shall insert the clause at 52.236-12, Cleaning Up, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation.</del> The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <del>within the small purchase limitation.</del>

### 36.513 Accident prevention.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.236-13, Accident Prevention, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b>. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <b>at or below the simplified acquisition threshold</b>. If the contract will involve work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.</p> <p>(b) The contracting officer shall insert the clause or the clause with its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see FAR Part 37) is contemplated, and technical representatives advise that special precautions are appropriate.</p> <p>(c) The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.</p>	<p>(a) The contracting officer shall insert the clause at 52.236-13, Accident Prevention, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del>. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <del>within the small purchase limitation</del>. If the contract will involve work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.</p> <p>(b) The contracting officer shall insert the clause or the clause with its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see FAR Part 37) is contemplated, and technical representatives advise that special precautions are appropriate.</p> <p>(c) The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.</p>

### 36.515 Schedules for construction contracts.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer may insert the clause at 52.236-15, Schedules for Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the <b>simplified acquisition threshold</b>, and the period of actual work performance exceeds 60 days. This clause may also be inserted in such solicitations and contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants imposition of the requirements. This clause should not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.</p>	<p>The contracting officer may insert the clause at 52.236-15, Schedules for Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the <del>small purchase limitation</del>, and the period of actual work performance exceeds 60 days. This clause may also be inserted in such solicitations and contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants imposition of the requirements. This clause should not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.</p>

### 36.521 Specifications and drawings for construction.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.236-21, Specifications and Drawings for Construction, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b>. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <b>at or below the simplified acquisition threshold</b>. When the Government needs record drawings, the contracting officer shall (a) use the clause with its Alternate I, if reproducible shop drawings are needed, or (b) use the clause with its Alternate II, if reproducible shop drawings are not needed.</p>	<p>The contracting officer shall insert the clause at 52.236-21, Specifications and Drawings for Construction, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del>. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be <del>within the small purchase limitation</del>. When the Government needs record drawings, the contracting officer shall (a) use the clause with its Alternate I, if reproducible shop drawings are needed, or (b) use the clause with its Alternate II, if reproducible shop drawings are not needed.</p>

<b>36.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.</b>	<b>36.602-5 Short selection processes for contracts not to exceed the <del>small purchase limitation</del>.</b>
<i>Interim</i>	<i>Prior</i>
<p>When authorized by the agency, either or both of the short processes described in this subsection may be used to select firms for contracts not expected to exceed the <b>simplified acquisition threshold</b>. Otherwise, the procedures prescribed in 36.602-3 and 36.602-4 shall be followed.</p> <p>(a) <i>Selection by the board.</i> The board shall review and evaluate architect-engineer firms in accordance with 36.602-3, except that the selection report shall serve as the final selection list and shall be provided directly to the contracting officer. The report shall serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.</p> <p>(b) <i>Selection by the chairperson of the board.</i> When the board decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be followed:</p> <ol style="list-style-type: none"> <li>(1) The chairperson of the board shall perform the functions required in 36.602-3.</li> <li>(2) The agency head or designated selection authority shall review the report and approve it or return it to the chairperson for appropriate revision.</li> </ol>	<p>When authorized by the agency, either or both of the short processes described in this subsection may be used to select firms for contracts not expected to exceed the <del>small purchase limitation</del>. Otherwise, the procedures prescribed in 36.602-3 and 36.602-4 shall be followed.</p> <p>(a) <i>Selection by the board.</i> The board shall review and evaluate architect-engineer firms in accordance with 36.602-3, except that the selection report shall serve as the final selection list and shall be provided directly to the contracting officer. The report shall serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.</p> <p>(b) <i>Selection by the chairperson of the board.</i> When the board decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be followed:</p> <ol style="list-style-type: none"> <li>(1) The chairperson of the board shall perform the functions required in 36.602-3.</li> <li>(2) The agency head or designated selection authority shall review the report and approve it or return it to the chairperson for appropriate revision.</li> </ol>

(3) Upon receipt of an approved report, the chairperson of the board shall furnish the contracting officer a copy of the report which will serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.	(3) Upon receipt of an approved report, the chairperson of the board shall furnish the contracting officer a copy of the report which will serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.
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### 36.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

<i>Interim</i>	<i>Prior</i>
<p>(a) Contracting officers shall use Standard Form 1417, Pre-solicitation Notice (Construction Contract), to inform prospective offerors that a solicitation will be released for a proposed construction or dismantling, demolition, or removal of improvements contract estimated to be \$100,000 or more. This form may also be used if the proposed contract is estimated to be less than \$100,000.</p> <p>(b) Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), shall be used to solicit and submit offers, and award construction or dismantling, demolition, or removal of improvements contracts expected to exceed the <b>simplified acquisition threshold</b>, and may be used for contracts <b>at or below the simplified acquisition threshold</b>. In all sealed bid solicitations, or when the Government otherwise requires a noncancelable offer acceptance period, the contracting officer shall insert in the blank provided in Block 13D the number of calendar days that the offer must be available for acceptance after the date offers are due.</p> <p>(c) Optional Form 347, Order for Supplies or Services, may be used for construction or dismantling, demolition, or removal of improvements contracts that are <b>at or below the simplified acquisition threshold</b>; <i>provided</i>, that the contracting officer includes the clauses required (see Subpart 36.5) in the small purchases documents (see Part 13, Small Purchases and Other Simplified Purchase Procedures).</p> <p>(d) Contracting officers may use Optional Form 1419, Abstract of Offers—Construction, and Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet, or the automated equivalent, to record offers submitted in response to a sealed bid solicitation (see 14.403) and may also use it to record offers submitted in response to negotiated solicitations.</p> <p>(e) Contracting activities shall use Standard Form 1420, Performance Evaluation (Construction), in evaluating and reporting on the performance of construction contractors as required in 36.201.</p>	<p>(a) Contracting officers shall use Standard Form 1417, Pre-solicitation Notice (Construction Contract), to inform prospective offerors that a solicitation will be released for a proposed construction or dismantling, demolition, or removal of improvements contract estimated to be \$100,000 or more. This form may also be used if the proposed contract is estimated to be less than \$100,000.</p> <p>(b) Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), shall be used to solicit and submit offers, and award construction or dismantling, demolition, or removal of improvements contracts expected to exceed the <del>small purchase limitations</del>, and may be used for contracts <del>within the small purchase limitations</del>. In all sealed bid solicitations, or when the Government otherwise requires a noncancellable offer acceptance period, the contracting officer shall insert in the blank provided in Block 13D the number of calendar days that the offer must be available for acceptance after the date offers are due.</p> <p>(c) Optional Form 347, Order for Supplies or Services, may be used for construction or dismantling, demolition, or removal of improvements contracts that are <del>within the small purchase limitation</del>; <i>provided</i>, that the contracting officer includes the clauses required (see Subpart 36.5) in the small purchases documents (see Part 13, Small Purchases and Other Simplified Purchase Procedures).</p> <p>(d) Contracting officers may use Optional Form 1419, Abstract of Offers—Construction, and Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet, or the automated equivalent, to record offers submitted in response to a sealed bid solicitation (see 14.403) and may also use it to record offers submitted in response to negotiated solicitations.</p> <p>(e) Contracting activities shall use Standard Form 1420, Performance Evaluation (Construction), in evaluating and reporting on the performance of</p>



	construction contractors as required in 36.201.
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### 36.702 Forms for use in contracting for architect-engineer services.

<i>Interim</i>	<i>Prior</i>
<p>(a) Contracting officers shall use Standard Form 252, Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services are to be performed in the United States, its possessions, or Puerto Rico.</p> <p>(b) The following standard forms shall be used preliminary to award of a contract for architect-engineer services relating to the construction, alteration, or repair of real property:</p> <p>(1) Standard Form 254, Architect-Engineer and Related Services Questionnaire, shall be used to obtain information from architect-engineer firms regarding their professional qualifications.</p> <p>(2) Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, shall be used to supplement the SF 254 with additional, specific information on the firms' qualifications for a particular project when the contract amount is expected to exceed the <b>simplified acquisition threshold</b>. This form may be used when the contract amount is expected to be <b>at or below the simplified acquisition threshold</b>, if the contracting officer determines that its use is appropriate.</p> <p>(c) Standard Form 1421, Performance Evaluation (Architect-Engineer), shall be used in evaluating and reporting on the performance of architect-engineer contractors as required in 36.604.</p>	<p>(a) Contracting officers shall use Standard Form 252, Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services are to be performed in the United States, its possessions, or Puerto Rico.</p> <p>(b) The following standard forms shall be used preliminary to award of a contract for architect-engineer services relating to the construction, alteration, or repair of real property:</p> <p>(1) Standard Form 254, Architect-Engineer and Related Services Questionnaire, shall be used to obtain information from architect-engineer firms regarding their professional qualifications.</p> <p>(2) Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, shall be used to supplement the SF 254 with additional, specific information on the firms' qualifications for a particular project when the contract amount is expected to exceed <del>the small purchase limitation</del>. This form may be used when the contract amount is expected to be <del>within the small purchase limitations</del>, if the contracting officer determines that its use is appropriate.</p> <p>(c) Standard Form 1421, Performance Evaluation (Architect-Engineer), shall be used in evaluating and reporting on the performance of architect-engineer contractors as required in 36.604.</p>

## PART 41—ACQUISITION OF UTILITY SERVICES

### 41.201 Policy.

<i>Interim</i>	<i>Prior</i>
<p>(a) Subject to paragraph (d) of this section, it is the policy of the Federal Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.</p> <p>(b) Except for acquisitions <b>at or below the simplified acquisition threshold in Part 13</b>, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory</p>	<p>(a) Subject to paragraph (d) of this section, it is the policy of the Federal Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.</p> <p>(b) Except for acquisitions below the <del>small purchase limitation (see 13.000)</del>, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are</p>

body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.501 or by statute. (See 41.202(c) for procedures to be used when the supplier refuses to execute a written contract.)

(c) Specific operating and management details, such as procedures for internal agency contract assistance and review, delegations of authority, and approval thresholds, may be prescribed by an individual agency subject to compliance with applicable statutes and regulations.

(d)(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Pub. L. 100-202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of a Federal agency may—

(i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to 41.206 and 17.5, with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and

(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal En-

fixed or adjusted by a regulatory body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.501 or by statute. (See 41.202(c) for procedures to be used when the supplier refuses to execute a written contract.)

(c) Specific operating and management details, such as procedures for internal agency contract assistance and review, delegations of authority, and approval thresholds, may be prescribed by an individual agency subject to compliance with applicable statutes and regulations.

(d)(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Pub. L. 100-202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of a Federal agency may—

(i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to 41.206 and 17.5, with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and

<p>ergy Regulatory Commission.</p> <p>(e) Prior to acquiring electric utility services on a competitive basis, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means, e.g. consultation with the state agency responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements. Proposals from alternative electric suppliers must provide a representation that service can be provided in a manner not inconsistent with section 8093 of Public Law 100-202 (see 41.201(d)). The representation must be supported with appropriate legal and factual rationale.</p>	<p>(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal Energy Regulatory Commission.</p> <p>(e) Prior to acquiring electric utility services on a competitive basis, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means, e.g. consultation with the state agency responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements. Proposals from alternative electric suppliers must provide a representation that service can be provided in a manner not inconsistent with section 8093 of Public Law 100-202 (see 41.201(d)). The representation must be supported with appropriate legal and factual rationale.</p>
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#### 41.401 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>Agencies shall review utility service invoices on a monthly basis and all utility accounts, with annual values exceeding the <b>simplified acquisition</b> threshold, on an annual basis. Annual reviews of accounts with annual values beneath the <b>simplified acquisition</b> threshold shall be conducted when deemed advantageous to the Government. The purpose of the monthly review is to ensure the accuracy of utility service invoices. The purpose of the annual review is to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine competitive markets for more advantageous service offerings. The annual review shall be based upon the facility's usage, conditions and characteristics of service at each individual delivery point for the most recent 12 months. If a more advantageous rate is appropriate, the Federal agency shall request the supplier to make such rate change immediately.</p>	<p>Agencies shall review utility service invoices on a monthly basis and all utility accounts, with annual values exceeding the <del>small-purchase</del> threshold, on an annual basis. Annual reviews of accounts with annual values beneath the <del>small-purchase-dollar</del> threshold shall be conducted when deemed advantageous to the Government. The purpose of the monthly review is to ensure the accuracy of utility service invoices. The purpose of the annual review is to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine competitive markets for more advantageous service offerings. The annual review shall be based upon the facility's usage, conditions and characteristics of service at each individual delivery point for the most recent 12 months. If a more advantageous rate is appropriate, the Federal agency shall request the supplier to make such rate change immediately.</p>

## PART 42—CONTRACT ADMINISTRATION

#### 42.903 [Amended]

<i>Interim</i>	<i>Prior</i>
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The contracting officer shall insert the clause at 52.242-13, Bankruptcy, in all solicitations and contracts exceeding the <b>simplified acquisition threshold</b> in FAR 13.000.	The contracting officer shall insert the clause at 52.242-13, Bankruptcy, in all solicitations and contracts exceeding the <del>small-purchase limitation</del> in FAR 13.000.
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#### 42.1104 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) The contract administration office determines the extent of production surveillance on the basis of (1) the criticality (degree of importance to the Government) assigned by the contracting officer (see 42.1105) to the supplies or services and (2) consideration of the following factors:</p> <ul style="list-style-type: none"> <li>(i) Contract requirements for reporting production progress and performance.</li> <li>(ii) The contract performance schedule.</li> <li>(iii) The contractor's production plan.</li> <li>(iv) The contractor's history of contract performance.</li> <li>(v) The contractor's experience with the contract supplies or services.</li> <li>(vi) The contractor's financial capability.</li> <li>(vii) Any supplementary written instructions from the contracting office.</li> </ul> <p>(b) Contracts <b>at or below the simplified acquisition</b> threshold should not normally require production surveillance.</p> <p>(c) In planning and conducting surveillance, contract administration offices shall make maximum use of any reliable contractor production control or data management systems.</p> <p>(d) In performing surveillance, contract administration office personnel shall avoid any action that may (1) be inconsistent with any contract requirement or (2) result in claims of waivers, of changes, or of other contract modifications.</p>	<p>(a) The contract administration office determines the extent of production surveillance on the basis of (1) the criticality (degree of importance to the Government) assigned by the contracting officer (see 42.1105) to the supplies or services and (2) consideration of the following factors:</p> <ul style="list-style-type: none"> <li>(i) Contract requirements for reporting production progress and performance.</li> <li>(ii) The contract performance schedule.</li> <li>(iii) The contractor's production plan.</li> <li>(iv) The contractor's history of contract performance.</li> <li>(v) The contractor's experience with the contract supplies or services.</li> <li>(vi) The contractor's financial capability.</li> <li>(vii) Any supplementary written instructions from the contracting office.</li> </ul> <p>(b) Contracts <del>of values less than the small-purchase</del> threshold should not normally require production surveillance.</p> <p>(c) In planning and conducting surveillance, contract administration offices shall make maximum use of any reliable contractor production control or data management systems.</p> <p>(d) In performing surveillance, contract administration office personnel shall avoid any action that may (1) be inconsistent with any contract requirement or (2) result in claims of waivers, of changes, or of other contract modifications.</p>

## PART 43—CONTRACT MODIFICATIONS

#### 43.205 [Amended]

<i>Interim</i>	<i>Prior</i>
(a)(1) The contracting officer shall insert the clause at	(a)(1) The contracting officer shall insert the clause at

52.243-1, Changes—Fixed-Price, in solicitations and contracts when a fixed-price contract for supplies is contemplated.

(2) If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for architect-engineer or other professional services, the contracting officer shall use the clause with its Alternate III.

(5) If the requirement is for transportation services, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(b)(1) The contracting officer shall insert the clause at 52.243-2, Changes—Cost-Reimbursement, in solicitations and contracts when a cost-reimbursement contract for supplies is contemplated.

(2) If the requirement is for services and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for construction, the contracting officer shall use the clause with its Alternate III.

(5) If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(c) The contracting officer shall insert the clause at 52.243-3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(d) The contracting officer shall insert the clause at 52.243-4, Changes, in solicitations and contracts for (1) dismantling, demolition, or removal of improvements; and (2) construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the **simplified acquisition threshold** in Part 13.

(e) The contracting officer shall insert the clause at 52.243-5, Changes and Changed Conditions, in solicita-

52.243-1, Changes—Fixed-Price, in solicitations and contracts when a fixed-price contract for supplies is contemplated.

(2) If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for architect-engineer or other professional services, the contracting officer shall use the clause with its Alternate III.

(5) If the requirement is for transportation services, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(b)(1) The contracting officer shall insert the clause at 52.243-2, Changes—Cost-Reimbursement, in solicitations and contracts when a cost-reimbursement contract for supplies is contemplated.

(2) If the requirement is for services and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for construction, the contracting officer shall use the clause with its Alternate III.

(5) If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(c) The contracting officer shall insert the clause at 52.243-3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(d) The contracting officer shall insert the clause at 52.243-4, Changes, in solicitations and contracts for (1) dismantling, demolition, or removal of improvements; and (2) construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the ~~applicable small purchase limitation~~ in Part 13.

(e) The contracting officer shall insert the clause at 52.243-5, Changes and Changed Conditions, in solicita-

tions and contracts for construction, when the contract amount is not expected to exceed the **simplified acquisition threshold** in Part 13.

(f) The contracting officer may insert a clause, substantially the same as the clause at 52.243-6, Change Order Accounting, in solicitations and contracts for supply and research and development contracts of significant technical complexity, if numerous changes are anticipated. The clause may be included in solicitations and contracts for construction if deemed appropriate by the contracting officer.

tions and contracts for construction, when the contract amount is not expected to exceed the ~~applicable small purchase limitation~~ in Part 13.

(f) The contracting officer may insert a clause, substantially the same as the clause at 52.243-6, Change Order Accounting, in solicitations and contracts for supply and research and development contracts of significant technical complexity, if numerous changes are anticipated. The clause may be included in solicitations and contracts for construction if deemed appropriate by the contracting officer.

## PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

### 44.201-2 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>a) Consent is required under cost-reimbursement and letter prime contracts (except facilities contracts) for subcontracts (1) for fabrication, purchase, rental, installation, or other acquisition of special test equipment valued at more than \$10,000 or of any items of facilities, or (2) that have experimental, developmental, or research work as one of their purposes</p> <p>(b) If the contractor does not have an approved purchasing system, consent is also required, under cost-reimbursement and letter prime contracts for (1) cost-reimbursement, time-and-materials, or labor-hour subcontracts and (2) fixed-price subcontracts that exceed either \$25,000 or 5 percent of the total estimated cost of the prime contract; except that for DoD, Coast Guard, and NASA, the amount shall be the greater of the <b>simplified acquisition threshold</b> in Part 13 or 5 percent of the total estimated cost of the prime contract.</p> <p>(c) If the contractor has an approved purchasing system— [entire (c) revised by FAC 90-23; (d) deleted].</p> <p>(1) Consent is not required for the subcontracts identified in paragraph (b) of this subsection (but see subparagraph (c)(2) of this subsection). However, advance notification is still required by 10 U.S.C. 2306(e) or 41 U.S.C. 254(b); and</p> <p>(2) Consent is required for subcontracts identified in the subcontracts clause of the contract. These can be subcontracts for critical systems, subsystems, or components, or other subcontracts selected by the contracting officer as needing special surveillance. Subcontracts may be identified by subcontract number or by class of items (e.g., subcontracts for engines on a prime</p>	<p>(a) Consent is required under cost-reimbursement and letter prime contracts (except facilities contracts) for subcontracts (1) for fabrication, purchase, rental, installation, or other acquisition of special test equipment valued at more than \$10,000 or of any items of facilities, or (2) that have experimental, developmental, or research work as one of their purposes</p> <p>(b) If the contractor does not have an approved purchasing system, consent is also required, under cost-reimbursement and letter prime contracts for (1) cost-reimbursement, time-and-materials, or labor-hour subcontracts and (2) fixed-price subcontracts that exceed either \$25,000 or 5 percent of the total estimated cost of the prime contract; except that for DoD, Coast Guard, and NASA, the amount shall be the greater of the <del>small purchase limitation</del> in Part 13 or 5 percent of the total estimated cost of the prime contract.</p> <p>(c) If the contractor has an approved purchasing system— [entire (c) revised by FAC 90-23; (d) deleted].</p> <p>(1) Consent is not required for the subcontracts identified in paragraph (b) of this subsection (but see subparagraph (c)(2) of this subsection). However, advance notification is still required by 10 U.S.C. 2306(e) or 41 U.S.C. 254(b); and</p> <p>(2) Consent is required for subcontracts identified in the subcontracts clause of the contract. These can be subcontracts for critical systems, subsystems, or components, or other subcontracts selected by the contracting officer as needing special surveillance. Subcontracts may be identified by subcontract number or by class of items (e.g., subcontracts for engines</p>

contract for airframes)	on a prime contract for airframes)
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#### 44.204 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) <i>Fixed-price contracts.</i> (1) Except as specified in (a)(2) below, the contracting officer—</p> <p>(i) Shall insert the clause at 52.244-1, Subcontracts (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed \$500,000; and</p> <p>(ii) May insert the clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed \$500,000, if the contracting officer determines that its use will be in the Government's interest.</p> <p>(2) The clause shall not be used (i) in solicitations and contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency prescribed clause on approval of subcontractors' facilities is required, or (ii) in architect-engineer contracts.</p> <p>(3) If the contracting officer elects to delete the requirement for advance notification of, or consent to, any subcontracts that were evaluated during negotiations, the contracting officer shall use the clause with its Alternate I. [FAC 90-23]</p> <p>(b) <i>Cost-reimbursement and letter contracts.</i> The contracting officer shall insert the clause at 52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts), in solicitations and contracts when a cost-reimbursement or letter contract is contemplated. If the contracting office is in DoD, the Coast Guard, or NASA, the contracting officer shall use the clause with its Alternate I. See also 44.205.</p> <p>(c) <i>Time-and-materials and labor-hour contracts.</i> The contracting officer shall insert the clause at 52.244-3, Subcontracts (Time-and-Materials and Labor-Hour Contracts), in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.</p> <p>(d) <i>Architect-engineer contracts.</i> The contracting officer shall insert the clause at 52.244-4, Subcontractors and Outside Associates and Consultants, in fixed-price architect-engineer contracts.</p> <p>(e) <i>Competition in subcontracting.</i> The contracting officer shall, when contracting by negotiation, insert the clause at 52.244-5, Competition in Subcontracting, in</p>	<p>(a) <i>Fixed-price contracts.</i> (1) Except as specified in (a)(2) below, the contracting officer—</p> <p>(i) Shall insert the clause at 52.244-1, Subcontracts (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed \$500,000; and</p> <p>(ii) May insert the clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed \$500,000, if the contracting officer determines that its use will be in the Government's interest.</p> <p>(2) The clause shall not be used (i) in solicitations and contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency prescribed clause on approval of subcontractors' facilities is required, or (ii) in architect-engineer contracts.</p> <p>(3) If the contracting officer elects to delete the requirement for advance notification of, or consent to, any subcontracts that were evaluated during negotiations, the contracting officer shall use the clause with its Alternate I. [FAC 90-23]</p> <p>(b) <i>Cost-reimbursement and letter contracts.</i> The contracting officer shall insert the clause at 52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts), in solicitations and contracts when a cost-reimbursement or letter contract is contemplated. If the contracting office is in DoD, the Coast Guard, or NASA, the contracting officer shall use the clause with its Alternate I. See also 44.205.</p> <p>(c) <i>Time-and-materials and labor-hour contracts.</i> The contracting officer shall insert the clause at 52.244-3, Subcontracts (Time-and-Materials and Labor-Hour Contracts), in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.</p> <p>(d) <i>Architect-engineer contracts.</i> The contracting officer shall insert the clause at 52.244-4, Subcontractors and Outside Associates and Consultants, in fixed-price architect-engineer contracts.</p> <p>(e) <i>Competition in subcontracting.</i> The contracting officer shall, when contracting by negotiation, insert the clause at 52.244-5, Competition in Subcontracting, in</p>

<p>solicitations and contracts when the contract amount is expected to exceed the <b>simplified acquisition threshold</b> in Part 13, unless—</p> <p>(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or</p> <p>(2) A contract of the type and/or purpose identified in paragraphs (c) and (d) above is contemplated.</p> <p>[44.205 deleted by FAC 90-23]</p>	<p>solicitations and contracts when the contract amount is expected to exceed the <del>small purchase limitation</del> in Part 13, unless—</p> <p>(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or</p> <p>(2) A contract of the type and/or purpose identified in paragraphs (c) and (d) above is contemplated.</p> <p>[44.205 deleted by FAC 90-23]</p>
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## PART 45—GOVERNMENT PROPERTY

### 45.106 Government property clauses.

<i>Interim</i>	<i>Prior</i>
<p>This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in Subpart 45.3.</p> <p>(a) The contracting officer shall insert the clause at 52.245-1, Property Records, in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records.</p> <p>(b)(1) The contracting officer shall insert the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated, except as provided in paragraphs (d) and (e) below.</p> <p>(2) If the contract is (i) a negotiated fixed-price contract for which prices are not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, or (ii) a fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see subpart 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.</p> <p>(3) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate II.</p> <p>(c) The contracting officer shall insert the clause at 52.245-3, Identification of Government-Furnished Property, in addition to the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price construction contract is contemplated under which the Government is to furnish</p>	<p>This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in Subpart 45.3.</p> <p>(a) The contracting officer shall insert the clause at 52.245-1, Property Records, in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records.</p> <p>(b)(1) The contracting officer shall insert the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated, except as provided in paragraphs (d) and (e) below.</p> <p>(2) If the contract is (i) a negotiated fixed-price contract for which prices are not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, or (ii) a fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see subpart 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.</p> <p>(3) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate II.</p> <p>(c) The contracting officer shall insert the clause at 52.245-3, Identification of Government-Furnished Property, in addition to the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price construction contract is contemplated under which the Government is to furnish</p>



<p>Government property f.o.b. railroad cars at a specified destination or f.o.b. truck at the project site. The contract Schedule shall specify the point of delivery and may include special terms and conditions covering installation, preparation for operation, or equipment testing by the Government or by another contractor.</p> <p>(d) The contracting officer may insert the clause at 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-price, time-and-material, or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is \$100,000 or less; unless a contract with an educational or nonprofit organization is contemplated.</p> <p>(e) When the cost of the item to be repaired does not exceed the <b>simplified acquisition threshold (but see 13.103(b))</b>, purchase orders for property repair need not include a Government property clause.</p> <p>(f)(1) The contracting officer shall insert the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts), in solicitations and contracts when a cost-reimbursement, time-and-material, or labor-hour contract is contemplated, except as provided in paragraph (d) above.</p> <p>(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate I.</p> <p>(g) The contracting officer shall insert the clause at 52.245-6, Liability for Government Property (Demolition Services Contracts), in addition to the clauses prescribed at 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements.</p>	<p>Government property f.o.b. railroad cars at a specified destination or f.o.b. truck at the project site. The contract Schedule shall specify the point of delivery and may include special terms and conditions covering installation, preparation for operation, or equipment testing by the Government or by another contractor.</p> <p>(d) The contracting officer may insert the clause at 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-price, time-and-material, or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is \$100,000 or less; unless a contract with an educational or nonprofit organization is contemplated.</p> <p>(e) When the cost of the item to be repaired does not exceed the <del>small purchase limitation in section 13.000</del>, purchase orders for property repair need not include a Government property clause.</p> <p>(f)(1) The contracting officer shall insert the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts), in solicitations and contracts when a cost-reimbursement, time-and-material, or labor-hour contract is contemplated, except as provided in paragraph (d) above.</p> <p>(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate I.</p> <p>(g) The contracting officer shall insert the clause at 52.245-6, Liability for Government Property (Demolition Services Contracts), in addition to the clause prescribed at 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements.</p>
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## PART 46—QUALITY ASSURANCE

### 46.202-1 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) Except as specified in (b) below, the Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that supplies or services acquired <b>at or below the simplified acquisition threshold</b> conform to contract quality requirements before they are tendered to the Government (see 46.301).</p> <p>(b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in advance of their tender for acceptance, or to pass</p>	<p>(a) Except as specified in (b) below, the Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that supplies or services acquired <del>under small purchases</del> conform to contract quality requirements before they are tendered to the Government (see 46.301).</p> <p>(b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in</p>

<p>judgment upon the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider—</p> <ul style="list-style-type: none"> <li>(1) The nature of the supplies and services being purchased and their intended use (see 46.204 and Table 46-1);</li> <li>(2) The potential losses in the event of defects;</li> <li>(3) The likelihood of uncontested replacement or correction of defective work; and</li> <li>(4) The cost of detailed Government inspection.</li> </ul>	<p>advance of their tender for acceptance, or to pass judgment upon the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider—</p> <ul style="list-style-type: none"> <li>(1) The nature of the supplies and services being purchased and their intended use (see 46.204 and Table 46-1);</li> <li>(2) The potential losses in the event of defects;</li> <li>(3) The likelihood of uncontested replacement or correction of defective work; and</li> <li>(4) The cost of detailed Government inspection.</li> </ul>
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#### 46.301 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.246-1, Contractor Inspection Requirements, in solicitations and contracts for supplies or services when the contract amount is expected to be <b>at or below the simplified acquisition threshold</b> and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202-1(b).</p>	<p>The contracting officer shall insert the clause at 52.246-1, Contractor Inspection Requirements, in solicitations and contracts for supplies or services when the contract amount is expected to be <del>within the small purchase limitation</del> and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202-1(b).</p>

#### 46.302 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.246-2, Inspection of Supplies—Fixed-Price, in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a fixed-price contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b>. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be <b>at or below the simplified acquisition threshold</b> and inclusion of the clause is in the Government's interest. If a fixed-price incentive contract is contemplated, the contracting officer shall use the clause with its Alternate I. If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, the contracting officer shall use the clause with its Alternate</p>	<p>The contracting officer shall insert the clause at 52.246-2, Inspection of Supplies—Fixed-Price, in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a fixed-price contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del>. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be <del>within the small purchase limitation</del> and inclusion of the clause is in the Government's interest. If a fixed-price incentive contract is contemplated, the contracting officer shall use the clause with its Alternate I. If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, the contracting officer shall use the clause with its Alternate II.</p>

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#### 46.304 [Amended]

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.246-4, Inspection of Services—Fixed-Price, in solicitations and contracts for services, or supplies that involve the furnishing of services, when a fixed-price contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b> . The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be <b>at or below the simplified acquisition threshold</b> and inclusion is in the Government's interest.	The contracting officer shall insert the clause at 52.246-4, Inspection of Services—Fixed-Price, in solicitations and contracts for services, or supplies that involve the furnishing of services, when a fixed-price contract is contemplated and the contract amount is expected to exceed the <del>small-purchase limitation</del> . The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be <del>within the small-purchase limitation</del> and inclusion is in the Government's interest.

#### 46.307 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.246-7, Inspection of Research and Development — Fixed-Price, in solicitations and contracts for research and development when (1) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, (2) a fixed-price contract is contemplated, and (3) the contract amount is expected to exceed the <b>simplified acquisition threshold</b>; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate.</p> <p>(b) The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be <b>at or below the simplified acquisition threshold</b>, and its use is in the Government's interest.</p>	<p>(a) The contracting officer shall insert the clause at 52.246-7, Inspection of Research and Development — Fixed-Price, in solicitations and contracts for research and development when (1) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, (2) a fixed-price contract is contemplated, and (3) the contract amount is expected to exceed the <del>small purchase limitation</del>; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate.</p> <p>(b) The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be <del>within the small purchase limitation</del>, and its use is in the Government's interest.</p>

#### 46.312 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.246-12, Inspection of Construction, in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b>. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be <b>at or below the simplified acquisition threshold</b>, and its use is in the Government's interest.</p>	<p>The contracting officer shall insert the clause at 52.246-12, Inspection of Construction, in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del>. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be <del>within the small purchase limitation</del>, and its use is in the Government's interest.</p>

#### 46.316 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.246-16, Responsibility for Supplies, in solicitations and contracts for (a) supplies, (b) services involving the furnishing of supplies, or (c) research and development, when a fixed-price contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b>. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is not expected to exceed the <b>simplified acquisition threshold</b> and inclusion of the clause is authorized under agency procedures.</p>	<p>The contracting officer shall insert the clause at 52.246-16, Responsibility for Supplies, in solicitations and contracts for (a) supplies, (b) services involving the furnishing of supplies, or (c) research and development, when a fixed-price contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del>. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is not expected to exceed the <del>small purchase limitation</del> and inclusion of the clause is authorized under agency procedures.</p>

**46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.**

**46.404 Government contract quality assurance of small purchases.**

<i>Interim</i>	<i>Prior</i>
<p>(a) In determining the type and extent of Government contract quality assurance to be required for <b>contracts at or below the simplified acquisition threshold</b>, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work (see 46.202-1).</p> <p>(b) When the conditions in 46.202-1(b) apply, the following policies shall govern:</p> <p>(1) Unless a special situation exists, the Government shall inspect <b>contracts at or below the simplified acquisition threshold</b> at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable.</p> <p>(2) Special situations may require more detailed quality assurance and the use of a standard inspection or higher-level contract quality requirement. These situations include those listed in 46.402 and contracts for items having critical applications. See Table 46-1 at 46.204 for other possible situations.</p> <p>(3) Detailed Government inspection may be limited to those characteristics that are special or likely to cause harm to personnel or property. When repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, Government inspection may be reduced to a periodic check of occasional purchases.</p>	<p>(a) In determining the type and extent of Government contract quality assurance to be required for <del>small purchases</del>, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work (see 46.202-1).</p> <p>(b) When the conditions in 46.202-1(b) apply, the following policies shall govern:</p> <p>(1) Unless a special situation exists, the Government shall inspect <del>small purchases</del> at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable.</p> <p>(2) Special situations may require more detailed quality assurance and the use of a standard inspection or higher-level contract quality requirement. These situations include those listed in 46.402 and contracts for items having critical applications. See Table 46-1 at 46.204 for other possible situations.</p> <p>(3) Detailed Government inspection may be limited to those characteristics that are special or likely to cause harm to personnel or property. When repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, Government inspection may be reduced to a periodic check of occasional purchases.</p>

**46.805 Contract clauses.**

<i>Interim</i>	<i>Prior</i>
<p>(a) Contracts that exceed the <b>simplified acquisition threshold</b>. The contracting officer shall insert the appropriate clause or combination of clauses specified in subparagraphs (a)(1) through (a)(5) of this section in solicitations and contracts when the contract amount is expected to be in excess of the <b>simplified acquisition threshold</b> and the contract is subject to the requirements of this subpart as indicated in 46.801:</p> <p>(1) In contracts requiring delivery of end items that</p>	<p>(a) <del>Contracts that exceed the small purchase limitation in 13.000</del>. The contracting officer shall insert the appropriate clause or combination of clauses specified in subparagraphs (a)(1) through (a)(5) of this section in solicitations and contracts when the contract amount is expected to be in excess of the <del>small purchase limitation in 13.000</del> and the contract is subject to the requirements of this subpart as indicated in 46.801:</p> <p>(1) In contracts requiring delivery of end items that</p>

<p>are not high-value items, insert the clause at 52.246-23, Limitation of Liability.</p> <p>(2) In contracts requiring delivery of high-value items, insert the clause at 52.246-24, Limitation of Liability—High Value Items.</p> <p>(3) In contracts requiring delivery of both high-value items and other end items, insert both clauses prescribed in (1) and (2) above, Alternate I of the clause at 52.246-24, and identify clearly in the contract schedule the line items designated as high-value items.</p> <p>(4) In contracts requiring the performance of services, insert the clause at 52.246-25, Limitation of Liability—Services.</p> <p>(5) In contracts requiring both the performance of services and the delivery of end items, insert the clause prescribed in subparagraph (4) above and the appropriate clause or clauses prescribed in subparagraph (1), (2), or (3) above, and identify clearly in the contract schedule any high-value line items.</p> <p>(b) <b>Acquisitions at or below the simplified acquisition threshold in Part 13.</b> The clauses prescribed by paragraph (a) of this section are not required for contracts <b>at or below the simplified acquisition threshold in Part 13.</b> However, in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in subparagraph (a)(1) or (a)(4) of this section in a contract <b>at or below the simplified acquisition threshold in Part 13</b> and <b>may</b> obtain any price reduction that is appropriate.</p>	<p>are not high-value items, insert the clause at 52.246-23, Limitation of Liability.</p> <p>(2) In contracts requiring delivery of high-value items, insert the clause at 52.246-24, Limitation of Liability—High Value Items.</p> <p>(3) In contracts requiring delivery of both high-value items and other end items, insert both clauses prescribed in (1) and (2) above, Alternate I of the clause at 52.246-24, and identify clearly in the contract schedule the line items designated as high-value items.</p> <p>(4) In contracts requiring the performance of services, insert the clause at 52.246-25, Limitation of Liability—Services.</p> <p>(5) In contracts requiring both the performance of services and the delivery of end items, insert the clause prescribed in subparagraph (4) above and the appropriate clause or clauses prescribed in subparagraph (1), (2), or (3) above, and identify clearly in the contract schedule any high-value line items.</p> <p>(b) <del>Contracts within the small purchase limitation in 13.000.</del> The clauses prescribed by paragraph (a) of this section are not required for contracts within the <del>small purchase limitation in 13.000.</del> However, in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in subparagraph (a)(1) or (a)(4) of this section in a contract <del>within the small purchase limitation in 13.000</del> and obtain any price reduction that is appropriate.</p>
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## PART 47—TRANSPORTATION

### 47.104-4 Contract clauses.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer, in order to ensure the application of section 10721 rates, shall insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts when the contracts will be—</p> <p>(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104-3(b)); or</p> <p>(2) Fixed-price f.o.b. origin contracts (other than <b>contracts at or below the simplified acquisition threshold in Part 13</b>) (see 47.104-2(b) and 47.104-3).</p> <p>(b) The contracting officer may insert the clause at</p>	<p>(a) The contracting officer, in order to ensure the application of section 10721 rates, shall insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts when the contracts will be—</p> <p>(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104-3(b)); or</p> <p>(2) Fixed-price f.o.b. origin contracts (other than <del>small purchases under Part 13</del>) (see 47.104-2(b) and 47.104-3).</p> <p>(b) The contracting officer may insert the clause at</p>

<p>52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts <b>made at or below the simplified acquisition threshold</b> in 13.000 when it is contemplated that the delivery terms will be f.o.b. origin.</p> <p>(c) The contracting officer shall insert the clause at 52.247-67, Submission of Commercial Transportation Bills to the General Services Administration for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract. [FAC 90-23]</p>	<p>52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts <del>awarded within the small purchase limitations</del> in 13.000 when it is contemplated that the delivery terms will be f.o.b. origin.</p> <p>(c) The contracting officer shall insert the clause at 52.247-67, Submission of Commercial Transportation Bills to the General Services Administration for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract. [FAC 90-23]</p>
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## 47.200 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) This subpart prescribes procedures for the acquisition by sealed bid or negotiated contracts of—</p> <p>(1) Freight transportation (including local drayage) from rail, motor (including bus), domestic water (including inland, coastwise, and intercoastal) carriers, and from freight forwarders; and</p> <p>(2) Transportation-related services including but not limited to stevedoring, storage, packing, marking, and ocean freight forwarding.</p> <p>(b) Except as provided in paragraph (c) below, this subpart does not apply to—</p> <p>(1) The acquisition of freight transportation from (i) domestic or international air carriers and (ii) international ocean carriers (see Subparts 47.4 and 47.5);</p> <p>(2) Freight transportation acquired by bills of lading;</p> <p>(3) Freight transportation for which rates are negotiated under 49 U.S.C. 10721(b)(1); or</p> <p>(4) <b>Contracts at or below the simplified acquisition threshold in Part 13.</b></p> <p>(c) With appropriate modifications, the procedures in this subpart may be applied to the acquisition of freight transportation from the carriers listed in subparagraph (b)(1) above and passenger transportation from any carrier or mode.</p> <p>(d) The procedures in this subpart are applicable to the transportation of household goods and personal effects of persons being relocated at Government expense except when acquired—</p> <p>(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR 101-7);</p> <p>(2) By U.S. Government bill of lading (GBL); or</p> <p>(3) By DoD under the Personal Property Manage-</p>	<p>(a) This subpart prescribes procedures for the acquisition by sealed bid or negotiated contracts of—</p> <p>(1) Freight transportation (including local drayage) from rail, motor (including bus), domestic water (including inland, coastwise, and intercoastal) carriers, and from freight forwarders; and</p> <p>(2) Transportation-related services including but not limited to stevedoring, storage, packing, marking, and ocean freight forwarding.</p> <p>(b) Except as provided in paragraph (c) below, this subpart does not apply to—</p> <p>(1) The acquisition of freight transportation from (i) domestic or international air carriers and (ii) international ocean carriers (see Subparts 47.4 and 47.5);</p> <p>(2) Freight transportation acquired by bills of lading;</p> <p>(3) Freight transportation for which rates are negotiated under 49 U.S.C. 10721(b)(1); or</p> <p>(4) <del>Small purchases under Part 13.</del></p> <p>(c) With appropriate modifications, the procedures in this subpart may be applied to the acquisition of freight transportation from the carriers listed in subparagraph (b)(1) above and passenger transportation from any carrier or mode.</p> <p>(d) The procedures in this subpart are applicable to the transportation of household goods and personal effects of persons being relocated at Government expense except when acquired—</p> <p>(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR 101-7);</p> <p>(2) By U.S. Government bill of lading (GBL); or</p> <p>(3) By DoD under the Personal Property Manage-</p>

ment Regulation (DoD 4500.34R). (e) Additional guidance for DOD acquisition of freight and passenger transportation is in the Defense Traffic Management Regulation.	ment Regulation (DoD 4500.34R). (e) Additional guidance for DOD acquisition of freight and passenger transportation is in the Defense Traffic Management Regulation.
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## 47.205 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) All Government agencies may contract for transportation or for transportation-related services and execute basic ordering agreements (BOA's) (see Subpart 16.7) unless agency regulations prescribe otherwise. However, it is generally more economical and efficient for most agencies to make use of term contracts and basic ordering agreements that have been executed by agencies that employ personnel experienced in contracting for transportation or for transportation-related services. The Department of Defense (DOD) and the General Services Administration (GSA) contract for transportation or for transportation-related services on behalf of other activities and agencies. For instance, GSA awards term contracts for services such as local drayage, office moves, and ocean-freight forwarding (see 47.105 for assistance).</p> <p>(b) Agencies may obtain transportation or transportation-related services for which the cost does not exceed the <b>threshold for use of simplified acquisition</b> procedures in Part 13, if term contracts or basic ordering agreements are not available</p>	<p>(a) All Government agencies may contract for transportation or for transportation-related services and execute basic ordering agreements (BOA's) (see Subpart 16.7) unless agency regulations prescribe otherwise. However, it is generally more economical and efficient for most agencies to make use of term contracts and basic ordering agreements that have been executed by agencies that employ personnel experienced in contracting for transportation or for transportation-related services. The Department of Defense (DOD) and the General Services Administration (GSA) contract for transportation or for transportation-related services on behalf of other activities and agencies. For instance, GSA awards term contracts for services such as local drayage, office moves, and ocean-freight forwarding (see 47.105 for assistance).</p> <p>(b) Agencies may obtain transportation or transportation-related services for which the cost does not exceed the <del>small-purchase limitation under the small-purchase</del> procedures in Part 13, if term contracts or basic ordering agreements are not available</p>

## 47.305-16 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) <i>Required shipping weights.</i> The contracting officer shall insert in solicitations and contracts the clause at 52.247-59, F.o.b. Origin—Carload and Truckload Shipments, when it is contemplated that they may result in f.o.b. origin contracts with shipments in carloads or truckloads. This will facilitate realistic freight cost evaluations of offers and ensure that contractors produce economical shipments of agreed size.</p> <p>(b) <i>Guaranteed shipping characteristics.</i> (1) The contracting officer shall insert in solicitations and contracts, excluding those <b>at or below the simplified acquisition threshold</b> of Part 13, the clause at 52.247-60, Guaranteed Shipping Characteristics, when shipping and other characteristics are required to evaluate offers as to transportation costs. When all of the</p>	<p>(a) <i>Required shipping weights.</i> The contracting officer shall insert in solicitations and contracts the clause at 52.247-59, F.o.b. Origin—Carload and Truckload Shipments, when it is contemplated that they may result in f.o.b. origin contracts with shipments in carloads or truckloads. This will facilitate realistic freight cost evaluations of offers and ensure that contractors produce economical shipments of agreed size.</p> <p>(b) <i>Guaranteed shipping characteristics.</i> (1) The contracting officer shall insert in solicitations and contracts, excluding those <del>awarded under the small-purchase procedures</del> of Part 13, the clause at 52.247-60, Guaranteed Shipping Characteristics, when shipping and other characteristics are required to evaluate offers as to transportation costs. When all of the shipping characteristics</p>



<p>shipping characteristics listed in paragraph (a) of the clause at 52.247-60 are not required to evaluate offers as to transportation costs, the contracting officer shall delete the characteristics not required from the clause.</p> <p>(2) The award document shall show the shipping characteristics used in the evaluation.</p> <p>(c) <i>Minimum size of shipments.</i> When volume rates may apply, the contracting officer shall insert in solicitations and contracts the clause at 52.247-61, F.o.b. Origin—Minimum Size of Shipments.</p> <p>(d) <i>Specific quantities unknown.</i> (1) When total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined, solicitations shall state that offers are to be submitted on the basis of delivery “f.o.b. origin” and/or “f.o.b. destination” and that offers will be evaluated on both bases.</p> <p>(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-62, Specific Quantities Unknown, when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.</p>	<p>listed in paragraph (a) of the clause at 52.247-60 are not required to evaluate offers as to transportation costs, the contracting officer shall delete the characteristics not required from the clause.</p> <p>(2) The award document shall show the shipping characteristics used in the evaluation.</p> <p>(c) <i>Minimum size of shipments.</i> When volume rates may apply, the contracting officer shall insert in solicitations and contracts the clause at 52.247-61, F.o.b. Origin—Minimum Size of Shipments.</p> <p>(d) <i>Specific quantities unknown.</i> (1) When total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined, solicitations shall state that offers are to be submitted on the basis of delivery “f.o.b. origin” and/or “f.o.b. destination” and that offers will be evaluated on both bases.</p> <p>(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-62, Specific Quantities Unknown, when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.</p>
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#### 47.405 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to <b>contracts awarded using the simplified acquisition procedures in</b> Part 13.</p>	<p>The contracting officer shall insert the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to <del>small purchases made under</del> Part 13.</p>

#### 47.504 Exceptions.

<i>Interim</i>	<i>Prior</i>
<p>The policy and procedures in this subpart do not apply to the following:</p>	<p>The policy and procedures in this subpart do not apply to the following:</p>

<p>(a) Shipments aboard vessels of the Panama Canal Commission or as required or authorized by law or treaty.</p> <p>(b) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353).</p> <p>(c) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.</p> <p>(d) <b>Contracts awarded using the simplified procedures in</b> Part 13.</p>	<p>(a) Shipments aboard vessels of the Panama Canal Commission or as required or authorized by law or treaty.</p> <p>(b) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353).</p> <p>(c) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.</p> <p>(d) <del>Small purchases under</del> Part 13.</p>
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# PART 49—TERMINATION OF CONTRACTS

## 49.504 Termination of fixed-price contracts for default.

<i>Interim</i>	<i>Prior</i>
<p>(a)(1) Supplies and services. The contracting officer shall insert the clause at 52.249-8, Default (Fixed-Price Supply and Service), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b>. The contracting officer may use the clause when the contract amount is <b>at or below the simplified acquisition threshold</b>, if appropriate (e.g., if the acquisition involves items with a history of unsatisfactory quality).</p> <p>(b) Research and development. The contracting officer shall insert the clause at 52.249-9, Default (Fixed-Price Research and Development), in solicitations and contracts for research and development when a fixed-price contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b>, except those with educational or nonprofit institutions on a no-profit basis. The contracting officer may use the clause when the contract amount is <b>at or below the simplified acquisition threshold</b>, if appropriate (e.g., if the contracting officer believes that key personnel essential to the work may be devoted to other programs).</p> <p>(c)(1) Construction. The contracting officer shall insert the clause at 52.249-10, Default (Fixed-Price Construction), in solicitations and contracts for construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the <b>simplified acquisition threshold</b>. The contracting officer may use the clause when the contract amount is <b>at or below the simplified acquisition threshold</b>, if appropriate (e.g., if completion dates are essential).</p>	<p>(a)(1) Supplies and services. The contracting officer shall insert the clause at 52.249-8, Default (Fixed-Price Supply and Service), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del>. The contracting officer may use the clause when the contract amount is <del>not expected to exceed the small purchase limitation</del>, if appropriate (e.g., if the acquisition involves items with a history of unsatisfactory quality).</p> <p>...</p> <p>(b) Research and development. The contracting officer shall insert the clause at 52.249-9, Default (Fixed-Price Research and Development), in solicitations and contracts for research and development when a fixed-price contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del>, except those with educational or nonprofit institutions on a no-profit basis. The contracting officer may use the clause when the contract amount is <del>not expected to exceed the small purchase limitation</del>, if appropriate (e.g., if the contracting officer believes that key personnel essential to the work may be devoted to other programs).</p> <p>(c)(1) Construction. The contracting officer shall insert the clause at 52.249-10, Default (Fixed-Price Construction), in solicitations and contracts for construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the <del>small purchase limitation</del>. The contracting officer may use the clause when the contract amount is <del>not expected to exceed the small purchase limitation</del>, if appropriate (e.g., if completion dates are essential).</p>

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 52.203-6 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 3.503-2, insert the following clause:  <b>RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUN 1995)</b></p> <p>(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.</p> <p>(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.</p> <p>(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all sub-contracts under this <b>contract which exceed \$100,000.</b></p> <p>(End of clause)</p>	<p>As prescribed in 3.503-2, insert the following clause:  <b>RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1985)</b></p> <p>(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.</p> <p>(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.</p> <p>(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all sub-contracts under this <del>contract.</del></p> <p>(End of clause)</p>

### 52.203-7 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 3.502-3, insert the following clause:  <b>ANTI-KICKBACK PROCEDURES (JUN 1995)</b></p> <p>(a) Definitions.</p> <p>“Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract..</p> <p>“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.</p> <p>“Prime contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.</p>	<p>As prescribed in 3.502-3, insert the following clause:  <b>ANTI-KICKBACK PROCEDURES (OCT 1988)</b></p> <p>(a) Definitions.</p> <p>“Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract..</p> <p>“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.</p> <p>“Prime contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.</p>

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“Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the

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“Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the

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<p>Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kick-back. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.</p> <p>(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this <b>contract which exceed \$100,000.</b></p> <p>(End of clause)</p>	<p>Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kick-back. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.</p> <p>(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this <del>contract.</del></p> <p>(End of clause)</p>
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## 52.209-6 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 9.409(b), insert the following clause:  <b>PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 1995)</b></p> <p>(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of <b>\$25,000</b> with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.</p> <p>(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed <b>\$25,000</b>, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.</p> <p>(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:</p> <ol style="list-style-type: none"> <li>(1) The name of the subcontractor.</li> <li>(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.</li> <li>(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement</li> </ol>	<p>As prescribed in 9.409(b), insert the following clause:  <b>PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (NOV 1992)</b></p> <p>(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of <del>the small purchase limitation at FAR 13.000</del> with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.</p> <p>(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed <del>the small purchase limitation at FAR 13.000</del>, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.</p> <p>(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:</p> <ol style="list-style-type: none"> <li>(1) The name of the subcontractor.</li> <li>(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.</li> <li>(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement</li> </ol>

<p>Programs.</p> <p>(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.</p> <p>(End of clause)</p>	<p>Programs.</p> <p>(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.</p> <p>(End of clause)</p>
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## 52.213-2 Invoices.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in <b>13.507(b)</b>, insert the following <b>clause</b>:</p> <p style="text-align: center;">INVOICES (APR 1984)</p> <p>The Contractor's invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state (a) the starting and ending dates of the subscription delivery, and (b) either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.</p> <p style="text-align: center;">(End of clause) (AV 7-2003.45 1974 APR)</p>	<p>As prescribed in <del>13.507(e)</del>, insert the following <del>clause in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, micro-filmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage):</del></p> <p style="text-align: center;">INVOICES (APR 1984)</p> <p>The Contractor's invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state (a) the starting and ending dates of the subscription delivery, and (b) either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.</p> <p style="text-align: center;">(End of clause) (AV 7-2003.45 1974 APR)</p>

## 52.213-3 Notice To Supplier.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in <b>13.507(c)</b>, insert the following clause in unpriced purchase orders:</p> <p style="text-align: center;">NOTICE TO SUPPLIER (APR 1984)</p> <p>This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE and notify the Contracting Officer immediately, giving your quotation.</p> <p style="text-align: center;">(End of clause) (AV 7-2003.46 1971 NOV)</p>	<p>As prescribed in <del>13.507(d)</del>, insert the following clause in unpriced purchase orders:</p> <p style="text-align: center;">NOTICE TO SUPPLIER (APR 1984)</p> <p>This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE and notify the Contracting Officer immediately, giving your quotation.</p> <p style="text-align: center;">(End of clause) (AV 7-2003.46 1971 NOV)</p>

## 52.215-1 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 15.106-1(b), insert the following clause:</p> <p style="text-align: center;"><b>EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (JUN 1995)</b></p> <p>(a) This clause applies if this contract exceeds the <b>simplified acquisition threshold</b> in Part 13 of the Federal Acquisition Regulation (FAR) and was entered into by negotiation.</p> <p>(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract.</p> <p>(c) The Contractor agrees to include in first-tier subcontracts, <b>exceeding \$100,000</b>, under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding the FAR Part 13 small purchase limitation; and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.</p> <p>(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.</p> <p style="text-align: center;">(End of clause)</p>	<p>As prescribed in 15.106-1(b), insert the following clause:</p> <p style="text-align: center;"><b>EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (<del>FEB 1993</del>)</b></p> <p>(a) This clause applies if this contract exceeds the <del>small purchase limitation</del> in Part 13 of the Federal Acquisition Regulation (FAR) and was entered into by negotiation.</p> <p>(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract.</p> <p>(c) The Contractor agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding the FAR Part 13 small purchase limitation; and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.</p> <p>(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.</p> <p style="text-align: center;">(End of clause)</p>



## 52.215-2 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 15.106-2(b), insert the following clause:</p> <p><b>AUDIT—NEGOTIATION (JUN 1995)</b></p> <p>(a) <i>Examination of costs.</i> If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain—and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examinations shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.</p> <p>(b) <i>Cost or pricing data.</i> If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all of the Contractor's books, records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), including computations and projections, related to proposing, negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.</p> <p>(c) <i>Reports.</i> If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.</p> <p>(d) <i>Availability.</i> The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment</p>	<p>As prescribed in 15.106-2(b), insert the following clause:</p> <p><b>AUDIT—NEGOTIATION (<del>FEB 1993</del>)</b></p> <p>(a) <i>Examination of costs.</i> If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain—and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examinations shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.</p> <p>(b) <i>Cost or pricing data.</i> If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all of the Contractor's books, records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), including computations and projections, related to proposing, negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.</p> <p>(c) <i>Reports.</i> If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.</p> <p>(d) <i>Availability.</i> The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment</p>

<p>under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—</p> <p>(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and</p> <p>(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.</p> <p>(e) Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, the Contractor may transfer computer data in machine readable form from one reliable computer medium to another. The Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The contractor's choice of form or type of materials described in paragraphs (a), (b), and (c) of this clause affects neither the Contractor's obligations nor the Government's rights under this clause.</p> <p>(f) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (f), in all subcontracts under this contract that <b>exceed the simplified acquisition threshold</b> in FAR Part 13, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.</p> <p style="text-align: right;">(End of clause)</p> <p><i>Alternate I (APR 1984).</i> In facilities contracts, add the following sentence at the end of paragraph (a) of the basic clause:</p> <p>The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.</p> <p><i>Alternate II (FEB 1993).</i> In cost-reimbursement contracts with educational and other nonprofit institutions, add the following paragraph (g) to the basic clause:</p> <p>(g) The provisions of OMB Circular No. A-133 “Audits of Institutions of Higher Learning and Other Nonprofit Institutions” apply to this contract.</p>	<p>under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—</p> <p>(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and</p> <p>(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.</p> <p>(e) Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, the Contractor may transfer computer data in machine readable form from one reliable computer medium to another. The Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The contractor's choice of form or type of materials described in paragraphs (a), (b), and (c) of this clause affects neither the Contractor's obligations nor the Government's rights under this clause.</p> <p>(f) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (f), in all subcontracts under this contract that <del>are over the small purchase limitation</del> in FAR Part 13, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.</p> <p style="text-align: right;">(End of clause)</p> <p><i>Alternate I (APR 1984).</i> In facilities contracts, add the following sentence at the end of paragraph (a) of the basic clause:</p> <p>The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.</p> <p><i>Alternate II (FEB 1993).</i> In cost-reimbursement contracts with educational and other nonprofit institutions, add the following paragraph (g) to the basic clause:</p> <p>(g) The provisions of OMB Circular No. A-133 “Audits of Institutions of Higher Learning and Other Nonprofit Institutions” apply to this contract.</p>
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## 52.216-1 Type of Contract.

*Interim*

*Prior*

<p>As prescribed in 16.105, complete and insert the following <b>provision</b>:</p> <p style="text-align: center;">TYPE OF CONTRACT (APR 1984)</p> <p>The Government contemplates award of a _____  [Contracting Officer insert specific type of contract]  contract resulting from this solicitation.</p> <p style="text-align: center;">(End of provision)  (R 3-501(b) Sec L (iv))</p>	<p>As prescribed in 16.105, complete and insert the following <del>provision in requests for proposals (RFP's) and requests for quotations (RFQ's), unless the solicitation is for (a) a small purchase (see Part 13) or (b) information or planning purposes (see 15.405).</del></p> <p style="text-align: center;">TYPE OF CONTRACT (APR 1984)</p> <p>The Government contemplates award of a _____  [Contracting Officer insert specific type of contract]  contract resulting from this solicitation.</p> <p style="text-align: center;">(End of provision)  (R 3-501(b) Sec L (iv))</p>
<b>52.219-4 [Reserved]</b>	<b>52.219-4 <del>Notice of Small Business-Small Purchase Set-Aside.</del></b>
<i>Interim</i>	<i>Prior</i>
	<p><del>—As prescribed in 19.508(a), insert the following provision:</del></p> <p style="text-align: center;"><del>NOTICE OF SMALL BUSINESS-SMALL PURCHASE SET-  ASIDE (AUG 1988)</del></p> <p><del>—Quotations under this acquisition are solicited from small business concerns only. If this purchase is for supplies, it will be made only from a small business concern furnishing its own manufactured product, or from a small business concern providing the product of another manufacturer. In either case, such product must be manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. Quotations that are not from a small business shall not be considered and shall be rejected.</del></p> <p style="text-align: center;"><del>(End of provision)</del></p>
<b>52.219-5 Notice of Total Small Business-Labor Surplus Area Set-Aside.</b>	
<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 19.508(b) and except for the Department of Defense, insert the following clause:</p> <p style="text-align: center;">NOTICE OF TOTAL SMALL BUSINESS-LABOR  SURPLUS AREA SET-ASIDE (<b>JUN 1995</b>)</p> <p>(a) <i>Definitions.</i></p> <p>“Labor surplus area,” as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.</p> <p>“Labor surplus area concern,” as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.</p> <p>“Perform substantially in labor surplus areas,” as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and</p>	<p>As prescribed in 19.508(b) and except for the Department of Defense, insert the following clause:</p> <p style="text-align: center;">NOTICE OF TOTAL SMALL BUSINESS-LABOR  SURPLUS AREA SET-ASIDE (<del>JAN 1994</del>)</p> <p>(a) <i>Definitions.</i></p> <p>“Labor surplus area,” as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.</p> <p>“Labor surplus area concern,” as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.</p> <p>“Perform substantially in labor surplus areas,” as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and</p>

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performance of services in labor surplus areas exceed 50 percent of the contract price.

“Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) *General.* (1) Offers are solicited from small business concerns that are also labor surplus area concerns. Offers received from concerns that are not small business-labor surplus area concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business-labor surplus area concern.

(c) *Agreement.* (1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will take the following actions:

(i) Perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance. However, if an area selected by the offeror is no longer classified as a labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.

(ii) If the contract exceeds the **simplified acquisition threshold**, submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

(A) The dollar amount of the contract.

(B) Identification of each labor surplus area in which contract (and first-tier subcontract) performance is taking or will take place.

(C) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (1) the prime Contractor and (2) first-tier subcontractors.

(D) The total dollar amount attributable to performance in labor surplus areas. (2) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this require-

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performance of services in labor surplus areas exceed 50 percent of the contract price.

“Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) *General.* (1) Offers are solicited from small business concerns that are also labor surplus area concerns. Offers received from concerns that are not small business-labor surplus area concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business-labor surplus area concern.

(c) *Agreement.* (1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will take the following actions:

(i) Perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance. However, if an area selected by the offeror is no longer classified as a labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.

(ii) If the contract exceeds the ~~small purchase limitation~~, submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

(A) The dollar amount of the contract.

(B) Identification of each labor surplus area in which contract (and first-tier subcontract) performance is taking or will take place.

(C) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (1) the prime Contractor and (2) first-tier subcontractors.

(D) The total dollar amount attributable to performance in labor surplus areas. (2) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this require-

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<p>ment does not apply in connection with construction or service contracts.</p> <p>(End of clause)</p> <p><i>Alternate I</i> (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(2) for subparagraph (c)(2) of the basic clause:</p> <p>(c)(2) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.</p>	<p>ment does not apply in connection with construction or service contracts.</p> <p>(End of clause)</p> <p><i>Alternate I</i> (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(2) for subparagraph (c)(2) of the basic clause:</p> <p>(c)(2) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.</p>
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## 52.219-7 Notice of Partial Small Business Set-Aside.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 19.508(d), insert the following clause:</p> <p><b>NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (JUN 1995)</b></p> <p>(a) <i>Definitions.</i></p> <p>“Labor surplus area,” as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.</p> <p>“Labor surplus area concern,” as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.</p> <p>“Perform substantially in labor surplus areas,” as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.</p> <p>“Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.</p> <p>(b) <i>General.</i> (1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns.</p> <p>(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.</p> <p>(3) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s).</p> <p>(4)(i) The contractor(s) for the set-aside portion</p>	<p>As prescribed in 19.508(d), insert the following clause:</p> <p><b>NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (JAN 1994)</b></p> <p>(a) <i>Definitions.</i></p> <p>“Labor surplus area,” as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.</p> <p>“Labor surplus area concern,” as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.</p> <p>“Perform substantially in labor surplus areas,” as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.</p> <p>“Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.</p> <p>(b) <i>General.</i> (1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns.</p> <p>(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.</p> <p>(3) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s).</p> <p>(4)(i) The contractor(s) for the set-aside portion</p>

will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. These concerns fall into two groups:

(A) Group 1—Small business concerns that are also labor surplus area concerns.

(B) Group 2—Other small business concerns.

(ii) Negotiations will be conducted with the concern in Group 1 that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue, first with concerns in Group 1 and then with concerns in Group 2, until a contract or contracts are awarded for the entire set-aside portion.

(5) The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) *Agreement.* (1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance of this contract. However, if an area selected by the offeror is no longer classified as a labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.

(2) The offeror agrees that, if awarded a contract that exceeds the **simplified acquisition threshold**, it will submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

(i) The dollar amount of the contract.

(ii) Identification of each labor surplus area in which contract (and subcontract) performance is taking or will take place.

(iii) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (A) the prime Contractor and (B) first-tier subcontractors.

(iv) The total dollar amount attributable to performance in labor surplus areas.

(3) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing

will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. These concerns fall into two groups:

(A) Group 1—Small business concerns that are also labor surplus area concerns.

(B) Group 2—Other small business concerns.

(ii) Negotiations will be conducted with the concern in Group 1 that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue, first with concerns in Group 1 and then with concerns in Group 2, until a contract or contracts are awarded for the entire set-aside portion.

(5) The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) *Agreement.* (1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance of this contract. However, if an area selected by the offeror is no longer classified as a labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.

(2) The offeror agrees that, if awarded a contract that exceeds the ~~small purchase limitation~~, it will submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

(i) The dollar amount of the contract.

(ii) Identification of each labor surplus area in which contract (and subcontract) performance is taking or will take place.

(iii) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (A) the prime Contractor and (B) first-tier subcontractors.

(iv) The total dollar amount attributable to performance in labor surplus areas.

(3) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing

<p>the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.</p> <p>(End of clause)</p> <p><i>Alternate I</i> (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(3) for subparagraph (c)(3) of the basic clause:</p> <p>(c)(3) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.</p>	<p>the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.</p> <p>(End of clause)</p> <p><i>Alternate I</i> (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(3) for subparagraph (c)(3) of the basic clause:</p> <p>(c)(3) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.</p>
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## 52.220-1 Preference for Labor Surplus Area Concerns.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 20.103(b), insert the following <b>provision</b>:</p> <p>PREFERENCE FOR LABOR SURPLUS AREA CONCERNS (APR 1984)</p> <p>(a) This acquisition is not a set-aside for labor surplus area (LSA) concerns. However, the offeror's status as such a concern may affect (1) entitlement to award in case of tie offers, or (2) offer evaluation in accordance with the Buy American Act clause of this solicitation. In order to determine whether the offeror is entitled to a preference under (1) or (2) above, the offeror must identify, below, the LSA in which the costs to be incurred on account of manufacturing or production (by the offeror or the first-tier subcontractors) amount to more than 50% of the contract price.</p> <p>_____</p> <p>_____</p> <p>(b) Failure to identify the locations as specified above will preclude consideration of the offeror as an LSA concern. If the offeror is awarded a contract as an LSA concern and would not have otherwise qualified for award, the offeror shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.</p> <p>(End of provision)</p>	<p>As prescribed in 20.103(b), insert the following <del>provision in solicitations and contracts that (a) exceed the appropriate small purchase limitation in Part 13, and (b) are not set aside for labor surplus area concerns:</del></p> <p>PREFERENCE FOR LABOR SURPLUS AREA CONCERNS (APR 1984)</p> <p>(a) This acquisition is not a set-aside for labor surplus area (LSA) concerns. However, the offeror's status as such a concern may affect (1) entitlement to award in case of tie offers, or (2) offer evaluation in accordance with the Buy American Act clause of this solicitation. In order to determine whether the offeror is entitled to a preference under (1) or (2) above, the offeror must identify, below, the LSA in which the costs to be incurred on account of manufacturing or production (by the offeror or the first-tier subcontractors) amount to more than 50% of the contract price.</p> <p>_____</p> <p>_____</p> <p>(b) Failure to identify the locations as specified above will preclude consideration of the offeror as an LSA concern. If the offeror is awarded a contract as an LSA concern and would not have otherwise qualified for award, the offeror shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.</p> <p>(End of provision)</p>

## 52.220-2 Notice of Total Labor Surplus Area Set-Aside.

<i>Interim</i>	<i>Prior</i>										
<p>As prescribed in 20.202, insert the following <b>clause</b>:</p> <p><b>NOTICE OF TOTAL LABOR SURPLUS AREA SET-ASIDE (JUN 1995)</b></p> <p>(a) <i>General.</i> Offers are solicited from concerns that will agree to perform as labor surplus area (LSA) concerns. This action is based on the Small Business Act (15 U.S.C. 644(d), (e), and (f)) and Defense Manpower Policy No. 4B (44 CFR 331). Offers received from concerns that do not agree to perform as LSA concerns will be considered nonresponsive.</p> <p>(b) <i>Definitions.</i> "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.</p> <p>"Labor surplus area concern," as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.</p> <p>(c) <i>Agreement.</i> The offeror agrees that, if awarded a contract as an LSA concern, the offeror will—</p> <p>(1) Perform the contract, or cause it to be performed, substantially in areas classified as LSA's at the time of award or at the time of performance; and</p> <p>(2) Submit to the Contracting Officer within 30 days after the award of the contract or such longer time as prescribed by the Contracting Officer, a report containing the following information:</p> <p><b>REPORT ON PERFORMANCE IN LABOR SURPLUS AREAS</b></p> <p>(a) Amount of the contract: \$ _____</p> <p>(b) Costs incurred or to be incurred by the prime Contractor under the contract on account of production, manufacturing, or appropriate services performed in the following labor surplus areas:</p> <table> <tr> <th><i>Labor surplus area</i></th><th><i>Cost</i></th></tr> <tr> <td>(1) _____</td><td>\$ _____</td></tr> <tr> <td>(2) _____</td><td>\$ _____</td></tr> </table>	<i>Labor surplus area</i>	<i>Cost</i>	(1) _____	\$ _____	(2) _____	\$ _____	<p>As prescribed in 20.202, insert the following <del>clause in solicitations and contracts estimated to exceed the appropriate small purchase limitation in Part 13 that are totally set aside for labor surplus area concerns:</del></p> <p><b>NOTICE OF TOTAL LABOR SURPLUS AREA SET-ASIDE (APR 1984)</b></p> <p>(a) <i>General.</i> Offers are solicited from concerns that will agree to perform as labor surplus area (LSA) concerns. This action is based on the Small Business Act (15 U.S.C. 644(d), (e), and (f)) and Defense Manpower Policy No. 4B (44 CFR 331). Offers received from concerns that do not agree to perform as LSA concerns will be considered nonresponsive.</p> <p>(b) <i>Definitions.</i> "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.</p> <p>"Labor surplus area concern," as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.</p> <p>(c) <i>Agreement.</i> The offeror agrees that, if awarded a contract as an LSA concern, the offeror will—</p> <p>(1) Perform the contract, or cause it to be performed, substantially in areas classified as LSA's at the time of award or at the time of performance; and</p> <p>(2) Submit to the Contracting Officer within 30 days after the award of the contract <del>(if it exceeds the appropriate small purchase limitation in Part 13 of the Federal Acquisition Regulation)</del> or such longer time as prescribed by the Contracting Officer, a report containing the following information:</p> <p><b>REPORT ON PERFORMANCE IN LABOR SURPLUS AREAS</b></p> <p>(a) Amount of the contract: \$ _____</p> <p>(b) Costs incurred or to be incurred by the prime Contractor under the contract on account of production, manufacturing, or appropriate services performed in the following labor surplus areas:</p> <table> <tr> <th><i>Labor surplus area</i></th><th><i>Cost</i></th></tr> <tr> <td>(1) _____</td><td>\$ _____</td></tr> </table>	<i>Labor surplus area</i>	<i>Cost</i>	(1) _____	\$ _____
<i>Labor surplus area</i>	<i>Cost</i>										
(1) _____	\$ _____										
(2) _____	\$ _____										
<i>Labor surplus area</i>	<i>Cost</i>										
(1) _____	\$ _____										



(3) _____ \$ _____	(2) _____ \$ _____
(4) _____ \$ _____	(3) _____ \$ _____
...	(4) _____ \$ _____
(c) Costs incurred or to be incurred by first-tier subcontractors on account of production, manufacturing, or appropriate services performed in the following labor surplus areas:	...
<i>Labor surplus area</i> <i>Cost</i>	(c) Costs incurred or to be incurred by first-tier subcontractors on account of production, manufacturing, or appropriate services performed in the following labor surplus areas:
(1) _____ \$ _____	<i>Labor surplus area</i> <i>Cost</i>
(2) _____ \$ _____	(1) _____ \$ _____
(3) _____ \$ _____	(2) _____ \$ _____
(4) _____ \$ _____	(3) _____ \$ _____
...	(4) _____ \$ _____
Total of (b) and (c) \$ _____	...
(End of clause)	Total of (b) and (c) \$ _____
(R 1-1.804-1(c))	(End of clause)
	(R 1-1.804-1(c))

## 52.220-3 Utilization of Labor Surplus Area Concerns.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 20.302(a), insert the following clause:</p> <p><b>UTILIZATION OF LABOR SURPLUS AREA CONCERNS (JUN 1995)</b></p> <p><b>(a) Policy.</b> It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.</p> <p><b>(b) Order of preference.</b> In complying with paragraph (a) above and with paragraph (c) of the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Contractor shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.</p> <p><b>(c) Definitions.</b> "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.</p> <p>"Labor surplus area concern," as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.</p> <p>(End of clause) (R 1-1.805-3(a)) (R 7-104.20(a) 1981 MAY)</p>	<p>As prescribed in 20.302(a), insert the following clause:</p> <p><b>UTILIZATION OF LABOR SURPLUS AREA CONCERNS (APR 1984)</b></p> <p><del>(a) Applicability.</del> This clause is applicable if this contract exceeds the appropriate small purchase limitation in Part 13 of the Federal Acquisition Regulation.</p> <p><del>(b) Policy.</del> It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.</p> <p><del>(c) Order of preference.</del> In complying with paragraph (b) above and with paragraph (c) of the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Contractor shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.</p> <p><del>(d) Definitions.</del> "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.</p> <p>"Labor surplus area concern," as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.</p> <p>(End of clause) (R 1-1.805-3(a)) (R 7-104.20(a) 1981 MAY)</p>

## 52.222-4 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 22.305, insert the following clause:</p> <p style="text-align: center;"><b>CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (JUN 1995)</b></p> <p>(a) <i>Overtime requirements.</i> No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.</p> <p>(b) <i>Violation; liability for unpaid wages; liquidated damages.</i> In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.</p> <p>(c) <i>Withholding for unpaid wages and liquidated damages.</i> The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.</p> <p>(d) <i>Payrolls and basic records.</i> (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall</p>	<p>As prescribed in 22.305, insert the following clause:</p> <p style="text-align: center;"><b>CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (MAR 1986)</b></p> <p>(a) <i>Overtime requirements.</i> No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.</p> <p>(b) <i>Violation; liability for unpaid wages; liquidated damages.</i> In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.</p> <p>(c) <i>Withholding for unpaid wages and liquidated damages.</i> The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.</p> <p>(d) <i>Payrolls and basic records.</i> (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall</p>

<p>preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.</p> <p>(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.</p> <p>(e) <i>Subcontracts.</i> The Contractor or subcontractor shall insert in any subcontracts, <b>exceeding \$100,000</b>, the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.</p> <p>(End of clause)</p>	<p>preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.</p> <p>(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.</p> <p>(e) <i>Subcontracts.</i> The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.</p> <p>(End of clause)</p>
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## 52.223-5 Certification Regarding A Drug-Free Workplace.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 23.505, insert the following provision:  <b>CERTIFICATION REGARDING A DRUG-FREE WORKPLACE (JUN 1995)</b></p> <p>(a) Definitions. As used in this provision,  “Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.  “Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.  “Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.</p>	<p>As prescribed in 23.505, insert the following provision:  <b>CERTIFICATION REGARDING A DRUG-FREE WORKPLACE (JUL 1990)</b></p> <p>(a) Definitions. As used in this provision,  “Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.  “Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.  “Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.</p>

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) By submission of its offer, the offeror, **(other than an individual) responding to a solicitation, that is expected to exceed the simplified acquisition threshold**, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed—

(1) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this provision;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision, that as a condition of continued employment on the contract resulting from this solicitation, the em-

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) By submission of its offer, the offeror, ~~if other than an individual, who is making an offer that equals or exceeds \$25,000~~, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, that, it will— no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed—

(1) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this provision;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision, that as a condition of continued employment on the contract resulting from this solicitation, the em-

<p>ployee will—</p> <ul style="list-style-type: none"> <li>(i) Abide by the terms of the statement; and</li> <li>(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;</li> <li>(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and</li> <li>(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace: <ul style="list-style-type: none"> <li>(i) Take appropriate personnel action against such employee, up to and including termination; or</li> <li>(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.</li> </ul> </li> <li>(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this provision.</li> <li>(c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.</li> <li>(d) Failure of the offeror to provide the certification required by paragraphs (b) or (c) of this provision, renders the offeror unqualified and ineligible for award. (See FAR 9.104-1(g) and 19.602-1(a)(2)(i).)</li> <li>(e) In addition to other remedies available to the Government, the certification in paragraphs (b) or (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.</li> </ul> <p style="text-align: center;">(End of provision)</p>	<p>ployee will—</p> <ul style="list-style-type: none"> <li>(i) Abide by the terms of the statement; and</li> <li>(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;</li> <li>(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and</li> <li>(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace: <ul style="list-style-type: none"> <li>(i) Take appropriate personnel action against such employee, up to and including termination; or</li> <li>(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.</li> </ul> </li> <li>(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this provision.</li> <li>(c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.</li> <li>(d) Failure of the offeror to provide the certification required by paragraphs (b) or (c) of this provision, renders the offeror unqualified and ineligible for award. (See FAR 9.104-1(g) and 19.602-1(a)(2)(i).)</li> <li>(e) In addition to other remedies available to the Government, the certification in paragraphs (b) or (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.</li> </ul> <p style="text-align: center;">(End of provision)</p>
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## 52.227-1 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>As prescribed at 27.201-2(a), insert the following clause:</p> <p><b>AUTHORIZATION AND CONSENT (JUN 1995)</b></p> <p>(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.</p> <p>(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed <b>the simplified acquisition threshold</b>); however, omission of this clause from any subcontract, <b>including those at or below the simplified acquisition threshold</b>, does not affect this authorization and consent.</p> <p>(End of clause) (R 7-103.22 1961 JAN)</p> <p><i>Alternate I</i> (APR 1984). The following is substituted for paragraph (a) of the clause:</p> <p>(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.</p> <p>(R 7-302.21 1964 MAR)</p> <p><i>Alternate II</i> (APR 1984). The following is substituted for paragraph (a) of the clause:</p> <p>(a) The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are <i>not</i> established by a government regulatory body, of any invention described in</p>	<p>As prescribed at 27.201-2(a), insert the following clause:</p> <p><b>AUTHORIZATION AND CONSENT (APR 1984)</b></p> <p>(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.</p> <p>(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed <del>\$25,000</del>); however, omission of this clause from any subcontract, <del>under or over \$25,000</del>, does not affect this authorization and consent.</p> <p>(End of clause) (R 7-103.22 1961 JAN)</p> <p><i>Alternate I</i> (APR 1984). The following is substituted for paragraph (a) of the clause:</p> <p>(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.</p> <p>(R 7-302.21 1964 MAR)</p> <p><i>Alternate II</i> (APR 1984). The following is substituted for paragraph (a) of the clause:</p> <p>(a) The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are <i>not</i> established by a government regulatory body, of any invention described in</p>

<p>and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the Contracting Officer directing the manner of performance.</p> <p>(R 7-1702.5(a) 1971 APR)</p>	<p>and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the Contracting Officer directing the manner of performance.</p> <p>(R 7-1702.5(a) 1971 APR)</p>
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### 52.227-3 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>Insert the following clause as prescribed at 27.203-1(b), 27.203-2(a), or 27.203-4(a)(2) as applicable:</p> <p>PATENT INDEMNITY (APR 1984)</p> <p>(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.</p> <p>(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.</p> <p>(End of clause)</p> <p>(R 7-104.5 1975 JUN)</p> <p><i>Alternate I</i> (APR 1984). The following paragraph (c)</p>	<p>Insert the following clause as prescribed at 27.203-1(b), 27.203-2(a), or 27.203-4(a)(2) as applicable:</p> <p>PATENT INDEMNITY (APR 1984)</p> <p>(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.</p> <p>(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.</p> <p>(End of clause)</p> <p>(R 7-104.5 1975 JUN)</p> <p><i>Alternate I</i> (APR 1984). The following paragraph (c)</p>



<p>is added to the clause:</p> <p>(c) This patent indemnification shall not apply to the following items:</p> <hr/> <p>[Contracting Officer list and/or identify the items to be excluded from this indemnity.]</p> <p>(R 7-104.5(a) 1964 SEP)</p> <p><i>Alternate II</i> (APR 1984). The following paragraph (c) is added to the clause:</p> <p>(c) This patent indemnification shall cover the following items:</p> <hr/> <p>[List and/or identify the items to be included under this indemnity.]</p> <p>(R 7-104.5(a) 1964 SEP)</p> <p><i>Alternate III</i> (JUN 1995). The following paragraph is added to the clause:</p> <p>( ) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over <b>the simplified acquisition threshold</b> issued under this contract and covering those communications services and facilities (1) that are or have been sold or offered for sale by the Contractor to the public, (2) that can be provided over commercially available equipment, or (3) that involve relatively minor modifications.</p>	<p>is added to the clause:</p> <p>(c) This patent indemnification shall not apply to the following items:</p> <hr/> <p>[Contracting Officer list and/or identify the items to be excluded from this indemnity.]</p> <p>(R 7-104.5(a) 1964 SEP)</p> <p><i>Alternate II</i> (APR 1984). The following paragraph (c) is added to the clause:</p> <p>(c) This patent indemnification shall cover the following items:</p> <hr/> <p>[List and/or identify the items to be included under this indemnity.]</p> <p>(R 7-104.5(a) 1964 SEP)</p> <p><i>Alternate III</i> (APR 1991). The following paragraph is added to the clause:</p> <p>( ) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over \$25,000 issued under this contract and covering those communications services and facilities (1) that are or have been sold or offered for sale by the Contractor to the public, (2) that can be provided over commercially available equipment, or (3) that involve relatively minor modifications.</p>
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## 52.236-2 Differing Site Conditions.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 36.502, insert the following <b>clause</b>:</p> <p>DIFFERING SITE CONDITIONS (APR 1984)</p> <p>(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character pro-</p>	<p>As prescribed in 36.502, insert the following <del>clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The Contracting Officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.</del></p> <p>DIFFERING SITE CONDITIONS (APR 1984)</p> <p>(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and gener-</p>

<p>vided for in the contract.</p> <p>(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.</p> <p>(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; <i>provided</i>, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.</p> <p>(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.</p> <p style="text-align: center;">(End of clause) (R 7-602.4 1968 FEB) (R 1-7.602-4)</p>	<p>ally recognized as inhering in work of the character provided for in the contract.</p> <p>(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.</p> <p>(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; <i>provided</i>, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.</p> <p>(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.</p> <p style="text-align: center;">(End of clause) (R 7-602.4 1968 FEB) (R 1-7.602-4)</p>
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### 52.236-3 Site Investigation and Conditions Affecting the Work.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 36.503, insert the following <b>clause</b>:</p> <p style="text-align: center;">SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)</p> <p>(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3)</p>	<p>As prescribed in 36.503, insert the following <del>clause in solicitations and contracts when a fixed-price construction contract or fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The Contracting Officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.</del></p> <p style="text-align: center;">SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)</p> <p>(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3)</p>

<p>uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.</p> <p>(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.</p> <p>(End of clause) (R 7-602.14 1964 JUN) (R 1-7.602-14) (R 7-602.33 1965 JAN)</p>	<p>uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.</p> <p>(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.</p> <p>(End of clause) (R 7-602.14 1964 JUN) (R 1-7.602-14) (R 7-602.33 1965 JAN)</p>
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## 52.236-6 Superintendence by the Contractor.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 36.506, insert the following <b>clause</b>:</p> <p><b>SUPERINTENDENCE BY THE CONTRACTOR</b> (APR 1984)</p> <p>At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on</p>	<p>As prescribed in 36.506, insert the following <del>elause in solicitations and contracts when a fixed-price construction contract or a fixed-price contract for dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.</del></p> <p><b>SUPERINTENDENCE BY THE CONTRACTOR</b> (APR 1984)</p> <p>At all times during performance of this contract and until the work is completed and accepted, the Contractor</p>

<p>the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.</p> <p>(End of clause) (R 7-602.12 1978 OCT) (R 1-7.602-12)</p>	<p>shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.</p> <p>(End of clause) (R 7-602.12 1978 OCT) (R 1-7.602-12)</p>
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## 52.236-8 Other Contracts.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 36.508, insert the following <b>clause</b>:</p> <p><b>OTHER CONTRACTS (APR 1984)</b></p> <p>The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.</p> <p>(End of clause) (R 7-602.15 1964 JUN) (R 1-7.602.15)</p>	<p>As prescribed in 36.508, insert the following <del>elause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.</del></p> <p><b>OTHER CONTRACTS (APR 1984)</b></p> <p>The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.</p> <p>(End of clause) (R 7-602.15 1964 JUN) (R 1-7.602.15)</p>

## 52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 36.509, insert the following <b>clause</b>:</p>	<p>As prescribed in 36.509, insert the following <del>elause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the</del></p>

<p style="text-align: center;">PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)</p> <p>(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.</p> <p>(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.</p> <p style="text-align: right;">(End of clause) (R 7-602.34 1965 JAN) (7-2101.13 1976 OCT)</p>	<p><del>clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.</del></p> <p style="text-align: center;">PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)</p> <p>(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.</p> <p>(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.</p> <p style="text-align: right;">(End of clause) (R 7-602.34 1965 JAN) (7-2101.13 1976 OCT)</p>
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## 52.236-10 Operations and Storage Areas.

<i>Interim</i>	<i>Prior</i>
As prescribed in 36.510, insert the following <b>clause</b> :	<p><del>As prescribed in 36.510, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling,</del></p>

<p>OPERATIONS AND STORAGE AREAS (APR 1984)</p> <p>(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.</p> <p>(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.</p> <p>(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.</p> <p>(End of clause) (R 7-602.35 1965 JAN)</p>	<p><del>demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.</del></p> <p>OPERATIONS AND STORAGE AREAS (APR 1984)</p> <p>(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.</p> <p>(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.</p> <p>(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.</p> <p>(End of clause) (R 7-602.35 1965 JAN)</p>
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## 52.236-11 Use and Possession Prior to Completion.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 36.511, insert the following <b>clause</b>:</p> <p>USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)</p> <p>(a) The Government shall have the right to take pos-</p>	<p><del>As prescribed in 36.511, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the small purchase limitation. This clause may be inserted in solicitations and contracts when the contract amount is expected to be within the small purchase limitation.</del></p> <p>USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)</p>

<p>session of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.</p> <p>(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.</p> <p>(End of clause) (R 7-602.39 1976 OCT) (1-7.602.31)</p>	<p>(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.</p> <p>(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.</p> <p>(End of clause) (R 7-602.39 1976 OCT) (1-7.602.31)</p>
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## 52.236-12 Cleaning Up.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 36.512, insert the following <b>clause</b>:</p> <p>CLEANING UP (APR 1984)</p> <p>The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.</p>	<p>As prescribed in 36.512, insert the following <del>clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.</del></p> <p>CLEANING UP (APR 1984)</p> <p>The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the</p>

(End of clause) (R 7-602.40 1965 JAN) (R 7-2101.21 1976 OCT)	Contracting Officer.  (End of clause) (R 7-602.40 1965 JAN) (R 7-2101.21 1976 OCT)
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## 52.236-15 Schedules for Construction Contracts.

<i>Interim</i>	<i>Prior</i>
As prescribed in 36.515, insert the following <b>clause</b> :	As prescribed in 36.515, <del>the Contracting Officer may insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the small purchase limitation, and the period of actual work performance exceeds 60 days. This clause may be inserted in such contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants impositions of the requirements. This clause should not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.</del>
<p>SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)</p> <p>(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.</p> <p>(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supple-</p>	<p>SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)</p> <p>(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.</p> <p>(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of con-</p>



<p>mentary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.</p> <p>(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.</p> <p>(End of clause) (R 7-603.48 1965 JAN)</p>	<p>struction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.</p> <p>(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.</p> <p>(End of clause) (R 7-603.48 1965 JAN)</p>
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## 52.236-21 Specifications and Drawings for Construction.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 36.521, insert the following <b>clause</b>:</p> <p><b>SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APR 1984)</b></p> <p>(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.</p> <p>(b) Wherever in the specifications or upon the draw-</p>	<p>As prescribed in 36.521, insert the following <del>clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.</del></p> <p><b>SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APR 1984)</b></p> <p>(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.</p>

ings the words “directed”, “required”, “ordered”, “designated”, “prescribed”, or words of like import are used, it shall be understood that the “direction”, “requirement”, “order”, “designation”, or prescription”, of the Contracting Officer is intended and similarly the words “approved”, “acceptable”, “satisfactory”, or words of like import shall mean “approved by,” or “acceptable to”, or “satisfactory to” the Contracting Officer, unless otherwise expressly stated.

(c) Where “as shown,” as indicated”, “as detailed”, or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word “provided” as used herein shall be understood to mean “provide complete in place,” that is “furnished and installed”.

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor’s approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government’s reasons therefor. Any work done before such approval shall be at the Contractor’s risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the

(b) Wherever in the specifications or upon the drawings the words “directed”, “required”, “ordered”, “designated”, “prescribed”, or words of like import are used, it shall be understood that the “direction”, “requirement”, “order”, “designation”, or prescription”, of the Contracting Officer is intended and similarly the words “approved”, “acceptable”, “satisfactory”, or words of like import shall mean “approved by,” or “acceptable to”, or “satisfactory to” the Contracting Officer, unless otherwise expressly stated.

(c) Where “as shown,” as indicated”, “as detailed”, or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word “provided” as used herein shall be understood to mean “provide complete in place,” that is “furnished and installed”.

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor’s approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government’s reasons therefor. Any work done before such approval shall be at the Contractor’s risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an

<p>variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.</p> <p>(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.</p> <p>(h) This clause shall be included in all subcontracts at any tier.</p> <p>(End of clause)</p> <p>(7-602.2 JUNE 1964 and 1-7.602-2)</p> <p>(7-602.41 JAN 1965)</p> <p>(7-602.47 APR 1966)</p> <p>(7-602.54 OCT 1976 and 1-7.602-36)</p> <p><i>Alternate I</i> (APR 1984). When record shop drawings are required and reproducible shop drawings are needed, add the following sentences to paragraph (g) of the basic clause:</p> <p>Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.</p> <p>(7-602.54(b)(1) OCT 1976)</p> <p><i>Alternate II</i> (APR 1984). When record shop drawings are required and reproducible shop drawings are not needed, the following sentences shall be added to paragraph (g) of the basic clause: Upon completing the work under this contract, the Contractor shall furnish _____ [<i>Contracting Officer complete by inserting desired amount</i>] sets of prints of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.</p> <p>(7-602.54(b)(2) 1976 OCT)</p>	<p>appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.</p> <p>(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.</p> <p>(h) This clause shall be included in all subcontracts at any tier.</p> <p>(End of clause)</p> <p>(7-602.2 JUNE 1964 and 1-7.602-2)</p> <p>(7-602.41 JAN 1965)</p> <p>(7-602.47 APR 1966)</p> <p>(7-602.54 OCT 1976 and 1-7.602-36)</p> <p><i>Alternate I</i> (APR 1984). When record shop drawings are required and reproducible shop drawings are needed, add the following sentences to paragraph (g) of the basic clause:</p> <p>Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.</p> <p>(7-602.54(b)(1) OCT 1976)</p> <p><i>Alternate II</i> (APR 1984). When record shop drawings are required and reproducible shop drawings are not needed, the following sentences shall be added to paragraph (g) of the basic clause: Upon completing the work under this contract, the Contractor shall furnish _____ [<i>Contracting Officer complete by inserting desired amount</i>] sets of prints of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.</p> <p>(7-602.54(b)(2) 1976 OCT)</p>
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## 52.243-5 Changes and Changed Conditions.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 43.205(e), insert the following <b>clause</b>:</p> <p>CHANGES AND CHANGED CONDITIONS (APR 1984)</p> <p>(a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the</p>	<p>As prescribed in 43.205(e), insert the following <del>clause in solicitations and contracts for construction, when the contract amount is not expected to exceed the applicable small purchase limitation in Part 13:</del></p> <p>CHANGES AND CHANGED CONDITIONS (APR 1984)</p> <p>(a) The Contracting Officer may, in writing, order</p>

<p>general scope of the contract.</p> <p>(b) The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site before proceeding with the work.</p> <p>(c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Contracting Officer shall make an equitable adjustment (see paragraph (d)) upon submittal of a “proposal for adjustment” (hereafter referred to as proposal) by the Contractor before final payment under the contract.</p> <p>(d) The Contracting Officer shall not make an equitable adjustment under paragraph (b) unless—</p> <p>(1) The Contractor has submitted and the Contracting Officer has received the required written notice; or (2) The Contracting Officer waives the requirement for the written notice.</p> <p>(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.</p> <p style="text-align: right;">(End of clause) (R SF-19)</p>	<p>changes in the drawings and specifications within the general scope of the contract.</p> <p>(b) The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site before proceeding with the work.</p> <p>(c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Contracting Officer shall make an equitable adjustment (see paragraph (d)) upon submittal of a “proposal for adjustment” (hereafter referred to as proposal) by the Contractor before final payment under the contract.</p> <p>(d) The Contracting Officer shall not make an equitable adjustment under paragraph (b) unless—</p> <p>(1) The Contractor has submitted and the Contracting Officer has received the required written notice; or (2) The Contracting Officer waives the requirement for the written notice.</p> <p>(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.</p> <p style="text-align: right;">(End of clause) (R SF-19)</p>
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## 52.244-2 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 44.204(b), insert the following clause:</p> <p><b>SUBCONTRACTS (COST-REIMBURSEMENT AND LETTER CONTRACTS) (FEB 1995)</b></p> <p>(a) “Subcontract,” as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if—</p> <p>(1) The proposed subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;</p> <p>(2) The proposed subcontract is fixed-price and exceeds either \$25,000 or 5 percent of the total estimated cost of this contract;</p> <p>(3) The proposed subcontract has experimental, developmental, or research work as one of its purposes; or</p> <p>(4) This contract is not a facilities contract and the proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of \$10,000 or</p>	<p>As prescribed in 44.204(b), insert the following clause:</p> <p><b>SUBCONTRACTS (COST-REIMBURSEMENT AND LETTER CONTRACTS) (FEB 1995)</b></p> <p>(a) “Subcontract,” as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if—</p> <p>(1) The proposed subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;</p> <p>(2) The proposed subcontract is fixed-price and exceeds either \$25,000 or 5 percent of the total estimated cost of this contract;</p> <p>(3) The proposed subcontract has experimental, developmental, or research work as one of its purposes; or</p> <p>(4) This contract is not a facilities contract and the proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of \$10,000 or</p>

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of any items of facilities.

(b)(1) In the case of a proposed subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed \$10,000, including any fee, (ii) is proposed to exceed \$100,000, or (iii) is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that, in the aggregate, are expected to exceed \$100,000, the advance notification required by paragraph (a) above shall include the information specified in subparagraph (2) below.

(2)(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained.

(iv) The proposed subcontract price and the Contractor's cost or price analysis.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical perform-

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of any items of facilities.

(b)(1) In the case of a proposed subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed \$10,000, including any fee, (ii) is proposed to exceed \$100,000, or (iii) is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that, in the aggregate, are expected to exceed \$100,000, the advance notification required by paragraph (a) above shall include the information specified in subparagraph (2) below.

(2)(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained.

(iv) The proposed subcontract price and the Contractor's cost or price analysis.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical perform-

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<p>ance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.</p> <p>(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.</p> <p>(d) If the Contractor has an approved purchasing system and the subcontract is within the scope of such approval, the Contractor may enter into the subcontracts described in subparagraphs (a)(1) and (a)(2) of this clause without the consent of the Contracting Officer. [FAC 90-23]</p> <p>(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts identified below: [FAC 90-23]</p> <p>_____.</p> <p>(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the allowability of any cost under this contract, or (3) to relieve the Contractor of any responsibility for performing this contract.</p> <p>(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.903(d) of the Federal Acquisition Regulation (FAR).</p> <p>(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.</p> <p>(i)(1) The Contractor shall insert in each price redetermination or incentive price revision subcontract under this contract the substance of the paragraph "Quarterly limitation on payments statement" of the clause at 52.216-5, Price Redetermination—Prospective, 52.216-6, Price Redetermination—Retroactive, 52.216-16, Incentive Price Revision—Firm Target, or 52.216-17, Incentive Price Revision—Successive Targets, as appropriate, modified in accordance with the paragraph enti-</p>	<p>ance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.</p> <p>(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.</p> <p>(d) If the Contractor has an approved purchasing system and the subcontract is within the scope of such approval, the Contractor may enter into the subcontracts described in subparagraphs (a)(1) and (a)(2) of this clause without the consent of the Contracting Officer. [FAC 90-23]</p> <p>(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts identified below: [FAC 90-23]</p> <p>_____.</p> <p>(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the allowability of any cost under this contract, or (3) to relieve the Contractor of any responsibility for performing this contract.</p> <p>(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.903(d) of the Federal Acquisition Regulation (FAR).</p> <p>(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.</p> <p>(i)(1) The Contractor shall insert in each price redetermination or incentive price revision subcontract under this contract the substance of the paragraph "Quarterly limitation on payments statement" of the clause at 52.216-5, Price Redetermination—Prospective, 52.216-6, Price Redetermination—Retroactive, 52.216-16, Incentive Price Revision—Firm Target, or 52.216-17, Incentive Price Revision—Successive Targets, as appropriate, modified in accordance with the paragraph enti-</p>
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<p>tled “Subcontracts” of that clause.</p> <p>(2) Additionally, the Contractor shall include in each cost-reimbursement subcontract under this contract a requirement that the subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph (1) above in each lower tier price redetermination or incentive price revision subcontract under that subcontract.</p> <p>(j) To facilitate small business participation in subcontracting, the Contractor agrees to provide progress payments on subcontracts under this contract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.</p> <p>(k) The Government reserves the right to review the Contractor’s purchasing system as set forth in FAR Subpart 44.3.</p> <p>(End of clause)</p> <p><i>Alternate I (JUN 1995).</i> If the contracting office is in DOD, the Coast Guard, or NASA, substitute the following subparagraph (a)(2) for subparagraph (a)(2) of the basic clause:</p> <p>(a)(2) The proposed subcontract is fixed-price and exceeds the greater of (i) the <b>simplified acquisition threshold</b> in Part 13 of the Federal Acquisition Regulation or (ii) 5 percent of the total estimated cost of this contract.</p>	<p>tled “Subcontracts” of that clause.</p> <p>(2) Additionally, the Contractor shall include in each cost-reimbursement subcontract under this contract a requirement that the subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph (1) above in each lower tier price redetermination or incentive price revision subcontract under that subcontract.</p> <p>(j) To facilitate small business participation in subcontracting, the Contractor agrees to provide progress payments on subcontracts under this contract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.</p> <p>(k) The Government reserves the right to review the Contractor’s purchasing system as set forth in FAR Subpart 44.3.</p> <p>(End of clause)</p> <p><i>Alternate I (JUN 1995).</i> If the contracting office is in DOD, the Coast Guard, or NASA, substitute the following subparagraph (a)(2) for subparagraph (a)(2) of the basic clause:</p> <p>(a)(2) The proposed subcontract is fixed-price and exceeds the greater of (i) the <b>simplified acquisition threshold</b> in Part 13 of the Federal Acquisition Regulation or (ii) 5 percent of the total estimated cost of this contract.</p>
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## 52.244-5 Competition in Subcontracting.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 44.204(e), insert the following <b>clause</b>:</p> <p><b>COMPETITION IN SUBCONTRACTING (APR 1984)</b></p> <p>The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.</p> <p>(End of clause)</p> <p>(V 7-104.40 1962 APR)</p> <p>(V 1-7.202-30)</p>	<p>As prescribed in 44.204(e), <del>when contracting by negotiation, insert the following clause in solicitations and contracts when the contract amount is expected to exceed the appropriate small purchase limitation in Part 13, unless—</del></p> <p><del>(a) A firm fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or</del></p> <p><del>—(b) A contract of the type and/or purpose identified in 44.204(e) and (d) is contemplated.</del></p> <p><b>COMPETITION IN SUBCONTRACTING (APR 1984)</b></p> <p>The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.</p>

(V 7-303.27) (V 7-402.29) (V 7-603.18) (V 7-605.37) (V 7-702.50) (V 7-703.43) (V 7-704.35) (V 7-1703.5) (V 7-1903.28) (V 7-1909.23)	(End of clause) (V 7-104.40 1962 APR) (V 1-7.202-30) (V 7-303.27) (V 7-402.29) (V 7-603.18) (V 7-605.37) (V 7-702.50) (V 7-703.43) (V 7-704.35) (V 7-1703.5) (V 7-1903.28) (V 7-1909.23)
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## 52.246-1 Contractor Inspection Requirements.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 46.301, insert the following <b>clause</b>:</p> <p><b>CONTRACTOR INSPECTION REQUIREMENTS</b>  (APR 1984)</p> <p>The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any Government inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the Government.</p> <p>(End of clause)  (R 7-103.24 1968 SEP)</p>	<p>As prescribed in 46.301, insert the following <del>clause in solicitations and contracts for supplies or services when the contract amount is expected to be within the small purchase limitation and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202-1(b).</del></p> <p><b>CONTRACTOR INSPECTION REQUIREMENTS</b>  (APR 1984)</p> <p>The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any Government inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the Government.</p> <p>(End of clause)  (R 7-103.24 1968 SEP)</p>

## 52.246-7 Inspection of Research and Development-Fixed Price.

<i>Interim</i>	<i>Prior</i>
As prescribed in 46.307(a), insert the following <b>clause</b> :	As prescribed in 46.307(a), insert the following



INSPECTION OF RESEARCH AND  
DEVELOPMENT— FIXED-PRICE (APR 1984)

(a) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(b) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the premises of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(c) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises.

(d) The Government shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the contract. Government failure to inspect and accept or reject the work shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with contract requirements.

(e) The Government has the right to reject nonconforming work. If the Contractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time as the Contracting Officer may authorize), the Contracting Officer may accept the work and make an equitable price reduction. Failure

clause in solicitations and contracts for research and development when (a) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, (b) a fixed-price contract is contemplated, and (c) the contract amount is expected to exceed the small purchase limitation; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate. The following clause may be used in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and its use is in the Government's interest.

INSPECTION OF RESEARCH AND  
DEVELOPMENT— FIXED-PRICE (APR 1984)

(a) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(b) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the premises of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(c) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises.

(d) The Government shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the contract. Government failure to inspect and accept or reject the work shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with contract requirements.

(e) The Government has the right to reject nonconforming work. If the Contractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time as the Contracting Officer may authorize), the Contracting Officer may accept

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to agree on a price reduction shall be a dispute.

(f) Inspection and test by the Government does not relieve the Contractor from responsibility for defects or other failures to meet the contract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the contract. If acceptance is not conclusive for any of these causes, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies (work) at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; *provided*, the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after the Contractor's receipt of notice of defects or nonconformance, to repayment of such portion of the contract price as is equitable under the circumstances if the Government elects not to require correction or replacement. When supplies (work) are (is) returned to the Contractor, the Contractor shall bear transportation costs from the original point of delivery to the Contractor's plant and return to the original point of delivery when that point is not the Contractor's plant.

(End of clause)  
(R 7-302.4(a) 1976 JUL)  
(R 1-7.302-4(a))

the work and make an equitable price reduction. Failure to agree on a price reduction shall be a dispute.

(f) Inspection and test by the Government does not relieve the Contractor from responsibility for defects or other failures to meet the contract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the contract. If acceptance is not conclusive for any of these causes, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies (work) at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; *provided*, the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after the Contractor's receipt of notice of defects or nonconformance, to repayment of such portion of the contract price as is equitable under the circumstances if the Government elects not to require correction or replacement. When supplies (work) are (is) returned to the Contractor, the Contractor shall bear transportation costs from the original point of delivery to the Contractor's plant and return to the original point of delivery when that point is not the Contractor's plant.

(End of clause)  
(R 7-302.4(a) 1976 JUL)  
(R 1-7.302-4(a))

## 52.246-12 Inspection of Construction.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 46.312, insert the following <b>clause</b>:</p> <p>INSPECTION OF CONSTRUCTION (JUL 1986)</p> <p>(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.</p> <p>(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.</p> <p>(c) Government inspections and tests are for the sole benefit of the Government and do not—</p> <ol style="list-style-type: none"> <li>(1) Relieve the Contractor of responsibility for providing adequate quality control measures;</li> <li>(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;</li> <li>(3) Constitute or imply acceptance; or</li> <li>(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.</li> </ol> <p>(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.</p> <p>(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the</p>	<p>As prescribed in 46.312, insert the following <del>clause in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may be used in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and its use is in the Government's interest.</del></p> <p>INSPECTION OF CONSTRUCTION (JUL 1986)</p> <p>(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.</p> <p>(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.</p> <p>(c) Government inspections and tests are for the sole benefit of the Government and do not—</p> <ol style="list-style-type: none"> <li>(1) Relieve the Contractor of responsibility for providing adequate quality control measures;</li> <li>(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;</li> <li>(3) Constitute or imply acceptance; or</li> <li>(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.</li> </ol> <p>(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.</p> <p>(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the</p>

<p>contract.</p> <p>(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.</p> <p>(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.</p> <p>(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.</p> <p>(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.</p> <p>(End of clause)</p>	<p>contract.</p> <p>(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.</p> <p>(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.</p> <p>(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.</p> <p>(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.</p> <p>(End of clause)</p>
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## 52.246-16 Responsibilities for Suppliers.

<i>Interim</i>	<i>Prior</i>
As prescribed in 46.316, insert the following <b>clause</b> :	As prescribed in 46.316, insert the following <del>clause</del> in solicitations and contracts for (a) supplies, (b) services involving the furnishing of supplies, or (c) research and development, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may use the clause in such solicitations and contracts when the contract amount is not expected to exceed the small purchase limitation, and inclusion of the clause is
RESPONSIBILITY FOR SUPPLIES (APR 1984)	

<p>(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.</p> <p>(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon—</p> <p>(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or</p> <p>(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.</p> <p>(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.</p> <p>(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.</p> <p>(End of clause) (R 7-103.6 1968 JUN) (R 1-7.102-6)</p>	<p><del>authorized under agency procedures.</del></p> <p><b>RESPONSIBILITY FOR SUPPLIES (APR 1984)</b></p> <p>(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.</p> <p>(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon—</p> <p>(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or</p> <p>(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.</p> <p>(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.</p> <p>(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.</p> <p>(End of clause) (R 7-103.6 1968 JUN) (R 1-7.102-6)</p>
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## 52.246-23 Limitation of Liability.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in <b>46.805</b>, insert the following <b>clause</b>:</p> <p><b>LIMITATION OF LIABILITY (APR 1984)</b></p> <p>(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract, and (2) results from</p>	<p>As prescribed in 46.805(a), insert the following <del>clause in solicitations and contracts when (a) the contract amount is expected to be over \$25,000, (b) the contract is subject to the requirements of Subpart 46.8 as indicated in 46.801, and (c) the contract requires delivery of end items that are not high-value items. This clause may also be used as prescribed in 46.805(b) in contracts of \$25,000 or less.</del></p> <p><b>LIMITATION OF LIABILITY (APR 1984)</b></p> <p>(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that (1) occurs after Government acceptance of the sup-</p>

<p>any defects or deficiencies in the supplies.</p> <p>(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—</p> <p>(1) All or substantially all of the Contractor's business;</p> <p>(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or</p> <p>(3) A separate and complete major industrial operation connected with the performance of this contract.</p> <p>(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.</p> <p>(d) The Contractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts.</p> <p>(End of clause) (R 7-104.45(a) 1974 APR)</p>	<p>plies delivered under this contract, and (2) results from any defects or deficiencies in the supplies.</p> <p>(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—</p> <p>(1) All or substantially all of the Contractor's business;</p> <p>(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or</p> <p>(3) A separate and complete major industrial operation connected with the performance of this contract.</p> <p>(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.</p> <p>(d) The Contractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts.</p> <p>(End of clause) (R 7-104.45(a) 1974 APR)</p>
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## 52.246-24 Limitation of Liability-High-Value Items.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in <b>46.805</b>, insert the following <b>clause</b>:</p> <p><b>LIMITATION OF LIABILITY HIGH-VALUE ITEMS (APR 1984)</b></p> <p>(a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this</p>	<p>As prescribed in <del>46.805(a)</del>, insert the following <del>clause in solicitations and contracts when (a) the contract amount is expected to be over \$25,000, (b) the contract is subject to the requirements of Subpart 46.8 as indicated in 46.801, and (c) the contract requires delivery of high-value items:</del></p> <p><b>LIMITATION OF LIABILITY HIGH-VALUE ITEMS (APR 1984)</b></p> <p>(a) Except as provided in paragraphs (b) through (e)</p>

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contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract, and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(d)(1) This clause does not diminish the Contractor's obligations, to the extent that they arise otherwise under this contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this contract.

(2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer—

(i) Pay the Government the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred; or

(ii) Provide other equitable relief.

(e) This clause shall not limit or otherwise affect the Government's rights under clauses, if included in this contract, that cover—

(1) Warranty of technical data;

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below, and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract, and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(d)(1) This clause does not diminish the Contractor's obligations, to the extent that they arise otherwise under this contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this contract.

(2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer—

(i) Pay the Government the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred; or

(ii) Provide other equitable relief.

(e) This clause shall not limit or otherwise affect the Government's rights under clauses, if included in this contract, that cover—

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<p>(2) Ground and flight risks or aircraft flight risks; or (3) Government property.</p> <p>(f) In each subcontract, except a subcontract covered by paragraph (g) below, the Contractor shall insert the appropriate clause, supplemented as necessary to reflect the relationship of the contracting parties, as follows:</p> <p>(1) In subcontracts for high-value items only, after obtaining the Contracting Officer's advance written approval, insert this clause, including this paragraph (f).</p> <p>(2) In subcontracts for other end items only, insert the clause at Federal Acquisition Regulation (FAR) subsection 52.246-23, Limitation of Liability.</p> <p>(g) In any subcontract for both high-value items for which this clause is appropriate, and other end items for which the clause at FAR subsection 52.246-23 is appropriate, after obtaining the Contracting Officer's advance written approval to use this clause, the Contractor shall (1) include both clauses, (2) identify high-value items by line item, and (3) insert the following preamble before paragraph (a) of this clause as used in that subcontract: <i>(This clause shall apply only to those items identified in this contract as being subject to this clause.)</i> (End of clause)</p> <p>(R 7-104.45(b) 1979 MAR) (R 7-204.33(a) 1974 APR)</p> <p><i>Alternate I</i> (APR 1984). If the contract is for both high-value items and other end items, the contracting officer shall identify the high-value items by line item and insert the following preamble before paragraph (a): <i>(This clause shall apply only to those items identified in this contract as being subject to this clause.)</i> (R 7-104.45(c) 1979 MAR) (R 7-204.33(b) 1974 APR)</p>	<p>(1) Warranty of technical data; (2) Ground and flight risks or aircraft flight risks; or (3) Government property.</p> <p>(f) In each subcontract, except a subcontract covered by paragraph (g) below, the Contractor shall insert the appropriate clause, supplemented as necessary to reflect the relationship of the contracting parties, as follows:</p> <p>(1) In subcontracts for high-value items only, after obtaining the Contracting Officer's advance written approval, insert this clause, including this paragraph (f).</p> <p>(2) In subcontracts for other end items only, insert the clause at Federal Acquisition Regulation (FAR) subsection 52.246-23, Limitation of Liability.</p> <p>(g) In any subcontract for both high-value items for which this clause is appropriate, and other end items for which the clause at FAR subsection 52.246-23 is appropriate, after obtaining the Contracting Officer's advance written approval to use this clause, the Contractor shall (1) include both clauses, (2) identify high-value items by line item, and (3) insert the following preamble before paragraph (a) of this clause as used in that subcontract: <i>(This clause shall apply only to those items identified in this contract as being subject to this clause.)</i> (End of clause)</p> <p>(R 7-104.45(b) 1979 MAR) (R 7-204.33(a) 1974 APR)</p> <p><i>Alternate I</i> (APR 1984). If the contract is for both high-value items and other end items, the contracting officer shall identify the high-value items by line item and insert the following preamble before paragraph (a): <i>(This clause shall apply only to those items identified in this contract as being subject to this clause.)</i> (R 7-104.45(c) 1979 MAR) (R 7-204.33(b) 1974 APR)</p>
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## 52.246-25 Limitation of Liability-Services.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in <b>46.805</b>, insert the following <b>clause</b>:</p> <p><b>LIMITATION OF LIABILITY—SERVICES</b> (APR 1984)</p>	<p>As prescribed in <del>46.805(a)</del>, insert the following <del>clause in solicitations and contracts when (a) the contract amount is expected to be over \$25,000, (b) the contract is subject to the requirements of Subpart 46.8 as indicated in 46.801, and (c) the contract is for services. This clause may also be used as prescribed in 46.805(b) in contracts of \$25,000 or less.</del></p> <p><b>LIMITATION OF LIABILITY—SERVICES</b> (APR 1984)</p>



<p>(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract, and (2) results from any defects or deficiencies in the services performed or materials furnished.</p> <p>(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—</p> <p>(1) All or substantially all of the Contractor's business;</p> <p>(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or</p> <p>(3) A separate and complete major industrial operation connected with the performance of this contract.</p> <p>(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.</p> <p>(d) The Contractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts over \$25,000.</p> <p>(End of clause) (R 7-1912 1974 APR)</p>	<p>(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract, and (2) results from any defects or deficiencies in the services performed or materials furnished.</p> <p>(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—</p> <p>(1) All or substantially all of the Contractor's business;</p> <p>(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or</p> <p>(3) A separate and complete major industrial operation connected with the performance of this contract.</p> <p>(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.</p> <p>(d) The Contractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts over \$25,000.</p> <p>(End of clause) (R 7-1912 1974 APR)</p>
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## 52.247-1 Commercial Bill of Lading Notations.

<i>Interim</i>	<i>Prior</i>
As prescribed in <b>47.104-4</b> , insert the following clause:	<del>(a)</del> As prescribed in <del>47.104-4</del> <del>(a)</del> , insert the following

<p>COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)</p> <p>If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:</p> <p>(a) If the Government is shown as the consignor or the consignee, the annotation shall be: "Transportation is for the . . . . [<i>name the specific agency</i>] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government."</p> <p>(b) If the Government is not shown as the consignor or the consignee, the annotation shall be: "Transportation is for the . . . . [<i>name the specific agency</i>] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. . . . . This may be confirmed by contacting . . . . [<i>name and address of the contract administration office listed in the contract</i>]."</p> <p>(End of clause) (R 7-103.25 1969 DEC) (R 7-203.14 1969 DEC) (R 1-19.109-1(b))</p>	<p>clause:</p> <p><del>(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104-3(b)); or</del></p> <p><del>— (2) Fixed-price f.o.b. origin contracts other than small purchases under Part 13 (see 47.104-2(b) and 47.104-3).</del></p> <p><del>— (b) As prescribed in 47.104-4(b), the contracting officer may insert the following clause:</del></p> <p>COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)</p> <p>If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:</p> <p>(a) If the Government is shown as the consignor or the consignee, the annotation shall be: "Transportation is for the . . . . [<i>name the specific agency</i>] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government."</p> <p>(b) If the Government is not shown as the consignor or the consignee, the annotation shall be: "Transportation is for the . . . . [<i>name the specific agency</i>] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. . . . . This may be confirmed by contacting . . . . [<i>name and address of the contract administration office listed in the contract</i>]."</p> <p>(End of clause) (R 7-103.25 1969 DEC) (R 7-203.14 1969 DEC) (R 1-19.109-1(b))</p>
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## 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 47.507(a), insert the following clause in solicitations and contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. (For application of the Cargo Preference Act of 1954, see 47.502(a)(3), 47.503(a), and 47.504.)</p> <p>PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS <b>(JUN 1995)</b></p> <p>(a) The Cargo Preference Act of 1954 (46 U.S.C.</p>	<p>As prescribed in 47.507(a), insert the following clause in solicitations and contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. (For application of the Cargo Preference Act of 1954, see 47.502(a)(3), 47.503(a), and 47.504.)</p> <p>PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS <del>(APR 1984)</del></p> <p>(a) The Cargo Preference Act of 1954 (46 U.S.C.</p>

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1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

- (1) Acquired for a U.S. Government agency account;
- (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer, and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dol-

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1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

- (1) Acquired for a U.S. Government agency account;
- (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer, and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
  - (B) Name of vessel.
  - (C) Vessel flag of registry.
  - (D) Date of loading.
  - (E) Port of loading.
  - (F) Port of final discharge.
  - (G) Description of commodity.
  - (H) Gross weight in pounds and cubic feet if available.
  - (I) Total ocean freight revenue in U.S. dol-
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lars.

(d) Except for **contracts at or below the simplified acquisition threshold** as described in 48 CFR 13, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to—

(1) **Contracts at or below the simplified acquisition threshold** as defined in 48 CFR 13;

(2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Phone: 202-426-4610.

(End of clause)

(R 1-19.108-2(b))

*Alternate I* (APR 1984). If an applicable statute requires, or if it has been determined under agency procedures, that supplies to be furnished under contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(b)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

(R 7-104.19, Clause paragraph (c) 1979 MAR)

*Alternate II* (APR 1984). If an applicable statute re-

lars.

(d) Except for ~~small purchases~~ as described in 48 CFR 13, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to—

(1) ~~Small purchases~~ as defined in 48 CFR 13;

(2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Phone: 202-426-4610.

(End of clause)

(R 1-19.108-2(b))

*Alternate I* (APR 1984). If an applicable statute requires, or if it has been determined under agency procedures, that supplies to be furnished under contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(b)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

(R 7-104.19, Clause paragraph (c) 1979 MAR)

*Alternate II* (APR 1984). If an applicable statute re-

<p>quires, or if it has been determined under agency procedures, that supplies, materials, or equipment to be shipped under construction contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(c)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):</p> <p>(a) When ocean transportation is required to bring supplies, materials, or equipment to the construction site from the United States either for use in performance of, or for incorporation in, the work called for by this contract, the Contractor shall use privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.</p> <p>(b) The Contractor shall not make any shipment exceeding 10 measurement tons (400 cubic feet) by vessels other than privately owned U.S.-flag commercial vessels without (1) notifying the Contracting Officer that U.S.-flag commercial vessels are not available at rates that are fair and reasonable for such vessels and (2) obtaining permission to ship in other vessels. If permission is granted, the contract price shall be equitably adjusted to reflect the difference in cost.</p> <p>(R 7-603.41 1979 JUN)</p>	<p>quires, or if it has been determined under agency procedures, that supplies, materials, or equipment to be shipped under construction contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(c)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):</p> <p>(a) When ocean transportation is required to bring supplies, materials, or equipment to the construction site from the United States either for use in performance of, or for incorporation in, the work called for by this contract, the Contractor shall use privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.</p> <p>(b) The Contractor shall not make any shipment exceeding 10 measurement tons (400 cubic feet) by vessels other than privately owned U.S.-flag commercial vessels without (1) notifying the Contracting Officer that U.S.-flag commercial vessels are not available at rates that are fair and reasonable for such vessels and (2) obtaining permission to ship in other vessels. If permission is granted, the contract price shall be equitably adjusted to reflect the difference in cost.</p> <p>(R 7-603.41 1979 JUN)</p>
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## 52.249-8 Default (Fixed-Price Supply and Service).

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 49.504(a)(1), insert the following <b>clause</b>:</p> <p><b>DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)</b> (APR 1984)</p> <p>(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—</p> <p>(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;</p> <p>(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or</p> <p>(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).</p>	<p>As prescribed in 49.504(a)(1), insert the following <del>clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may also be used when the contract amount is not expected to exceed the small purchase limitation, if appropriate (e.g., if the acquisition involves items with a history of unsatisfactory quality).</del></p> <p><b>DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)</b> (APR 1984)</p> <p>(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—</p> <p>(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;</p> <p>(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or</p> <p>(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).</p>

<p>(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.</p> <p>(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.</p> <p>(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.</p> <p>(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.</p> <p>(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.</p> <p>(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from</p>	<p>(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.</p> <p>(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.</p> <p>(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.</p> <p>(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.</p> <p>(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.</p> <p>(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from</p>
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these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 1-8.707)

(R 7-103.11 1959 AUG)

*Alternate I* (APR 1984). If the contract is for transportation or transportation-related services, delete paragraph (f) of the basic clause, redesignate the remaining paragraphs accordingly, and substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(e) If this contract is terminated while the Contractor has possession of Government goods, the Contractor shall, upon direction of the Contracting Officer, protect and preserve the goods until surrendered to the Government or its agent. The Contractor and Contracting Officer shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be a dispute under the Disputes clause.

(R 1-7.703-8)

these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 1-8.707)

(R 7-103.11 1959 AUG)

*Alternate I* (APR 1984). If the contract is for transportation or transportation-related services, delete paragraph (f) of the basic clause, redesignate the remaining paragraphs accordingly, and substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(e) If this contract is terminated while the Contractor has possession of Government goods, the Contractor shall, upon direction of the Contracting Officer, protect and preserve the goods until surrendered to the Government or its agent. The Contractor and Contracting Officer shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be a dispute under the Disputes clause.

(R 1-7.703-8)

## 52.249-9 Default (Fixed-Price Research and Development).

<i>Interim</i>	<i>Prior</i>
<p>As prescribed in 49.504(b), insert the following <b>clause</b>:</p> <p><b>DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT) (APR 1984)</b></p> <p>(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—</p> <ul style="list-style-type: none"> <li>(i) Perform the work under the contract within the time specified in this contract or any extension;</li> <li>(ii) Prosecute the work so as to endanger performance of this contract (but see subparagraph (a)(2) below); or</li> <li>(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).</li> </ul> <p>(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) of this paragraph may be exercised if the Contractor does not cure such failure within 10 days (or more, if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.</p> <p>(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, work similar to the work terminated, and the Contractor will be liable to the Government for any excess costs for the similar work. However, the Contractor shall continue the work not terminated.</p> <p>(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.</p> <p>(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default</p>	<p>As prescribed in 49.504(b), insert the following <del>clause in solicitations and contracts for research and development when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation, except those with educational or nonprofit institutions on a no-profit basis. This clause may also be used when the contract amount is not expected to exceed the small purchase limitation, if appropriate (e.g., if the contracting officer believes that key personnel essential to the work may be diverted to other programs).</del></p> <p><b>DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT) (APR 1984)</b></p> <p>(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—</p> <ul style="list-style-type: none"> <li>(i) Perform the work under the contract within the time specified in this contract or any extension;</li> <li>(ii) Prosecute the work so as to endanger performance of this contract (but see subparagraph (a)(2) below); or</li> <li>(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).</li> </ul> <p>(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) of this paragraph may be exercised if the Contractor does not cure such failure within 10 days (or more, if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.</p> <p>(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, work similar to the work terminated, and the Contractor will be liable to the Government for any excess costs for the similar work. However, the Contractor shall continue the work not terminated.</p> <p>(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.</p> <p>(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default</p>



is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule or other performance requirements.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed or partially completed work not previously delivered to, and accepted by, the Government and (2) other property, including contract rights, specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the Contracting Officer for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss from outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 1-8.710)  
(R 7-302.9(a) 1969 AUG)

is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule or other performance requirements.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed or partially completed work not previously delivered to, and accepted by, the Government and (2) other property, including contract rights, specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the Contracting Officer for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss from outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 1-8.710)  
(R 7-302.9(a) 1969 AUG)

## 52.249-10 Default (Fixed-Price Construction).

<i>Interim</i>	<i>Prior</i>
As prescribed in 49.504(c)(1), insert the following <b>clause:</b>	As prescribed in 49.504(c)(1), insert the following <del>clause in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may also be used when the contract amount is not expected to exceed the small purchase limitation.</del>

DEFAULT (FIXED-PRICE CONSTRUCTION)  
(APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and

~~chase limitation, if appropriate (e.g., if completion dates are essential).~~

DEFAULT (FIXED-PRICE CONSTRUCTION)  
(APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and

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obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 1-8.709-1)

(R 7-602.5 1969 AUG)

*Alternate I* (APR 1984). If the contract is for dismantling, demolition, or removal of improvements, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(R 7-2101.7 1976 OCT)

*Alternate II* (APR 1984). If the contract is to be awarded during a period of national emergency, subparagraph (b)(1) below may be substituted for subparagraph (b)(1) of the basic clause:

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier

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obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 1-8.709-1)

(R 7-602.5 1969 AUG)

*Alternate I* (APR 1984). If the contract is for dismantling, demolition, or removal of improvements, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(R 7-2101.7 1976 OCT)

*Alternate II* (APR 1984). If the contract is to be awarded during a period of national emergency, subparagraph (b)(1) below may be substituted for subparagraph (b)(1) of the basic clause:

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier

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arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(R 7-602.5 1969 AUG)  
(R 1-16.404(e))

*Alternate III* (APR 1984). If the contract is for dismantling, demolition, or removal of improvements and is to be awarded during a period of national emergency, substitute the following paragraph (a) for paragraph (a) of the basic clause. The following subparagraph (b)(1) may be substituted for subparagraph (b)(1) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence

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arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(R 7-602.5 1969 AUG)  
(R 1-16.404(e))

*Alternate III* (APR 1984). If the contract is for dismantling, demolition, or removal of improvements and is to be awarded during a period of national emergency, substitute the following paragraph (a) for paragraph (a) of the basic clause. The following subparagraph (b)(1) may be substituted for subparagraph (b)(1) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence

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of both the Contractor and the subcontractors or suppliers; and (R 7-2101.7 1976 OCT)	of both the Contractor and the subcontractors or suppliers; and (R 7-2101.7 1976 OCT)
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## PART 53—FORMS

<b>53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).</b>	<b>53.213 <del>Small purchases and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).</del></b>
<i>Interim</i>	<i>Prior</i>
<p>The following forms are prescribed as stated below for use in <b>simplified acquisition procedures</b>, orders under existing contracts or agreements, and orders from required sources of supplies and <b>services</b>:</p> <p>(a) SF 18 (Rev. <b>6/95</b>), Request for Quotations. SF 18 prescribed in 53.215-1(a), shall be used in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107(a).</p> <p>(b) SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.503 (b).</p> <p>(c) SF 44 (Rev. 10/83), Purchase Order Invoice Voucher. SF 44 is prescribed for use in <b>simplified acquisition procedures</b>, as specified in 13.505-3.</p> <p>(d) SF 1165, Receipt for Cash-Subvoucher. SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.405(e).</p> <p>(e) OF 347 (10/83), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services-Schedule Continuation. OF's 347 and 348 (or approved agency forms) may be used as follows:</p> <p>(1) To accomplish <b>acquisitions under simplified acquisition procedures</b>, as specified in <b>13.505-1</b>.</p> <p>(2) To establish blanket purchase agreements (BPA's), as specified in 13.203, and to make purchases under BPA's, as specified in 13.204(e)(3).</p> <p>(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).</p> <p>(4) As otherwise specified in this regulation (e.g., see 5.503(c), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)).</p> <p>Pending the publication of a new edition of OF 347, the title and the effective data of FAR clause 52.222-4, Contract Work Hours and Safety Standards Act-</p>	<p>The following forms are prescribed as stated below for use in <del>small purchases</del>, orders under existing contracts or agreements, and orders from required sources of supplies and <del>services</del>;</p> <p>(a) SF 18 (Rev. <del>5/93</del>), Request for Quotations. SF 18 prescribed in 53.215-1(a), shall be used in obtaining price, cost, delivery, and related information from suppliers <del>for small purchases</del>, as specified in 13.107(a).</p> <p>(b) SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.503 (b).</p> <p>(c) SF 44 (Rev. 10/83), Purchase Order Invoice Voucher. SF 44 is prescribed for use in <del>small purchases</del>, as specified in 13.505-3.</p> <p>(d) SF 1165, Receipt for Cash-Subvoucher. SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.405(e).</p> <p>(e) OF 347 (10/83), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services-Schedule Continuation. OF's 347 and 348 (or approved agency forms) may be used as follows:</p> <p>(1) To accomplish <del>small purchases</del>, as specified in <del>13.505-1(a)-(2)</del>.</p> <p>(2) To establish blanket purchase agreements (BPA's), as specified in 13.203, and to make purchases under BPA's, as specified in 13.204(e)(3).</p> <p>(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).</p> <p>(4) As otherwise specified in this regulation (e.g., see 5.503(c), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)).</p> <p>Pending the publication of a new edition of OF 347, the title and the effective data of FAR clause 52.222-4,</p>

Overtime Compensation-General (APR 1984), in the block titled "Purchase Order Terms and Conditions" are revised to Contract Work Hours and Safety Standards Act-Overtime Compensation (MAR 1986).	Contract Work Hours and Safety Standards Act-Overtime Compensation-General (APR 1984), in the block titled "Purchase Order Terms and Conditions" are revised to Contract Work Hours and Safety Standards Act-Overtime Compensation (MAR 1986).
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### 53.215-1 Solicitation and receipt of proposals and quotations.

<i>Interim</i>	<i>Prior</i>
<p>The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or <b>acquisitions made using simplified acquisition procedures</b>):</p> <p>(a) SF 18 (REV. 10/83), Request For Quotation. SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers for negotiated acquisitions, as specified in 15.406-2(a)(2).</p> <p>(b) SF 26 (REV. 4/85), Award/Contract. SF 26 is prescribed for use in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.414(b).</p> <p>(c) SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, shall be used for amending requests for quotations, as specified in 15.410.</p> <p>(d) SF 33, Solicitation, Offer, and Award. SF 33, prescribed in 53.214(c), shall be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either SF 33 or SF 26, as specified in 15.406-1(b) and 15.414.</p> <p>(e) OF 336, Continuation Sheet. OF 336, prescribed in 53.214(h), may be used as a continuation sheet in solicitations, as specified in 15.406-2(b).</p> <p>(f) SF 129, Solicitation Mailing List Application. SF 129, prescribed in 53.214(e), shall be used in establishing and maintaining lists of potential sources, as specified in 14.205-1(d).</p> <p>(g) SF 1447, Solicitation/Contract. SF 1447 is prescribed for use in soliciting offers for supplies or services and for awarding contracts that result from the offers. It shall be used in connection with solicitations and contracts which use the simplified contract format (see 15.416) and may be used in place of the SF 26 or SF 33 with other solicitations (see 15.414(c)). Agencies may prescribe additional detailed instructions for use of the form.</p>	<p>The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or <del>small purchases</del>):</p> <p>(a) SF 18 (REV. 10/83), Request For Quotation. SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers for negotiated acquisitions, as specified in 15.406-2(a)(2).</p> <p>(b) SF 26 (REV. 4/85), Award/Contract. SF 26 is prescribed for use in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.414(b).</p> <p>(c) SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, shall be used for amending requests for quotations, as specified in 15.410.</p> <p>(d) SF 33, Solicitation, Offer, and Award. SF 33, prescribed in 53.214(c), shall be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either SF 33 or SF 26, as specified in 15.406-1(b) and 15.414.</p> <p>(e) OF 336, Continuation Sheet. OF 336, prescribed in 53.214(h), may be used as a continuation sheet in solicitations, as specified in 15.406-2(b).</p> <p>(f) SF 129, Solicitation Mailing List Application. SF 129, prescribed in 53.214(e), shall be used in establishing and maintaining lists of potential sources, as specified in 14.205-1(d).</p> <p>(g) SF 1447, Solicitation/Contract. SF 1447 is prescribed for use in soliciting offers for supplies or services and for awarding contracts that result from the offers. It shall be used in connection with solicitations and contracts which use the simplified contract format (see 15.416) and may be used in place of the SF 26 or SF 33 with other solicitations (see 15.414(c)). Agencies may prescribe additional detailed instructions for use of the form.</p>

### 53.236-1 Construction.

<i>Interim</i>	<i>Prior</i>
<p>The following forms are prescribed, as stated below, for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.</p> <p>(a) SF 1417 (REV. 8/90), Presolicitation Notice (Construction Contract). SF 1417 is prescribed for use in notifying prospective offerors of solicitations estimated to be \$100,000 or more and may be used if the proposed contract is estimated to be less than \$100,000, as specified in 36.701(a).</p> <p>(b) SF 1420 (10/83), Performance Evaluation - Construction Contracts. SF 1420 is prescribed for use in evaluating and reporting on the performance of construction contractors within approved dollar thresholds and as otherwise specified in 36.701(e).</p> <p>(c) Reserved.</p> <p>(d) Reserved.</p> <p>(e) SF 1442 (4/85), Solicitation, Offer and Award (Construction, Alteration, or Repair). SF 1442 is prescribed for use in soliciting offers and awarding contracts expected to exceed the <b>simplified acquisition threshold</b> for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements (and may be used for contracts within the <b>simplified acquisition threshold</b>), as specified in 36.701(b).</p> <p>(f) OF 347 (10/83), Order for Supplies or Services. OF 347, prescribed in 53.213(e), (or an approved agency form) may be used for contracts <b>under the simplified acquisition threshold</b> for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements, as specified in 36.701(c).</p> <p>(g) OF 1419 (11/88), Abstract of Offers-Construction, and OF 1419A (11/88), Abstract of Offers-Construction, Continuation Sheet. OF's 1419 and 1419A are prescribed for use in recording bids (and may be used for recording proposal information), as specified in 36.701(d).</p>	<p>The following forms are prescribed, as stated below, for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.</p> <p>(a) SF 1417 (REV. 8/90), Presolicitation Notice (Construction Contract). SF 1417 is prescribed for use in notifying prospective offerors of solicitations estimated to be \$100,000 or more and may be used if the proposed contract is estimated to be less than \$100,000, as specified in 36.701(a).</p> <p>(b) SF 1420 (10/83), Performance Evaluation - Construction Contracts. SF 1420 is prescribed for use in evaluating and reporting on the performance of construction contractors within approved dollar thresholds and as otherwise specified in 36.701(e).</p> <p>(c) Reserved.</p> <p>(d) Reserved.</p> <p>(e) SF 1442 (4/85), Solicitation, Offer and Award (Construction, Alteration, or Repair). SF 1442 is prescribed for use in soliciting offers and awarding contracts expected to exceed the <del>small purchase limitation</del> for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements (and may be used for contracts within the <del>small purchase limitation</del>), as specified in 36.701(b).</p> <p>(f) OF 347 (10/83), Order for Supplies or Services. OF 347, prescribed in 53.213(e), (or an approved agency form) may be used for contracts <del>of \$10,000 or less</del> for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements, as specified in 36.701(c).</p> <p>(g) OF 1419 (11/88), Abstract of Offers-Construction, and OF 1419A (11/88), Abstract of Offers-Construction, Continuation Sheet. OF's 1419 and 1419A are prescribed for use in recording bids (and may be used for recording proposal information), as specified in 36.701(d).</p>

### 53.301-18 SF 18 (Rev 6/95), Request for Quotations.

<i>Interim</i>	<i>Prior</i>
[See revised SF18 attached following this page]	

### 53.302-347 OF 347 (Rev 6/95), Order for Supplies or Services.

<i>Interim</i>	<i>Prior</i>
[See revised OF 347 attached following this page]	



# SECTION 5



## SECTION 5 - POINTS OF CONTACT

If you have additional questions concerning the topics covered in the satellite broadcast or would like a copy of the video please contact the following individuals:

### **Simplified Acquisition Procedures (SAP)**

Diana Maykowsky (703) 274-6308  
Defense Logistics Agency DSN 284-6308  
SAP Team Leader FAX: (703) 274-8180

Ms. Mary Ackerman (703) 516-1697  
Department of State FAX: (703) 875-  
6155  
SAP Team Member m.ackerman@dos.us-state.gov

### **Electronic Contracting/FACNET**

Help Desk/Hotline 1-800 334-3414

### **GSA Advantage - "On line Shopping Service"**

Help Desk/Hotline (703) 305-7359

### **Federal Government Purchase Card (IMPAC)**

Ms. Mary Lou Benzel (703) 305-6658  
FAX: (703) 305-5094  
mary.benzel@gsa.gov

### **Small Business**

Ms. Victoria Moss (202) 501-4764  
General Services Administration FAX: (202) 501-3341  
Small Business Team Leader victoria.moss@gsa.gov

Other points of contact:

### **Office of the Secretary of Defense**

Mr. David Drabkin (703) 614-3882  
Office of the Deputy Under Secretary of Defense, FAX: (703) 614-1690  
Acquisition Reform (ODUSD(AR)) drabkid@acq.osd.mil

### **Army**

Mr. James Brown (703) 274-8190  
Army Materiel Command DSN 284-8190  
Acquisition Improvement Task Force FAX: (703) 274-3198

jameswbrown@amcaq01@hqamc

**Navy/Marines**

Ms. Alex Dean (703) 602-2849  
Office of the Assistant Secretary of the Navy DSN 332-2849  
(Research, Development and Acquisition) FAX: (703) 602-2117  
alex\_dean@hq.secnave.mil

**Air Force**

Maj Kimberly Hurd (703) 697-8947  
Office of the Secretary of the Air Force DSN 227-8947  
Acquisition Management Policy Division FAX: (703) 614-1491  
hurd@aqpo.af.mil

**Defense Logistics Agency**

Ms. Ynette Shelkin (703) 274-6431  
Procurement Directorate DSN 284-6431  
Contract Policy Team FAX: (703) 274-0310  
shelkin\_ynette@hq2ccgw.hq.dla.mil

**Coast Guard**

Ms. Cecelia Royster (202) 267-0768  
Policy & Review Division FAX: (202) 267-4019

**Federal Government (Civilian Agencies)**

Mr. Michael Miller (202) 501-3618  
Federal Acquisition Institute (FAI) FAX: (202) 501-3341  
michael.miller@gsa.gov

**Industry**

Mr. Jim Goggins (703) 734-5401  
National Contract Management Association (NCMA) FAX: (703) 448-0939

Ms. Ella Schiralli (703) 907-7585  
Electronic Industries Association (EIA) FAX: (703) 841-2802  
eschiralli@eia.org

Ms. Jody Olmer (202) 463-5522  
Chamber of Commerce FAX: (202) 887-3445

**Acquisition Reform Communications Center (ARCC)**

COL Sharolyn I. Hayes (703) 845-6755  
Director FAX: (703) 820-9753  
hayessi@acq.osd.mil

# SECTION 6

# GSA Advantage!

## AN ON-LINE SHOPPING SERVICE

"The future ain't what It used to be" - Yogi Berra

The General Services Administration (GSA) has accepted the President's challenge and is leading the effort to bring electronic commerce into the present. An electronic ordering system is being developed that will put the world of products and services offered through our various supply programs, at our customers' fingertips. This system **GSA Advantage!** - will enable customers to browse, search on product specific information, review delivery options and place orders without having to wade through schedules, catalogs, or call for help. The system is being developed based on information gleaned from commercial systems, and the in-house lessons learned from the Federal Supply Schedule MUFFIN system and from Information Technology Service's (formerly Information Resource Management Service) On-Line Schedules System.

## HOW?

First we have gathered electronic item information from our supply catalog. Next we will tackle a limited group of schedules along with our retail catalogs for the next phase of the system's roll out. A limited group of schedules for the first phase of the system's roll out have been targeted. The majority of these schedules have contract effective dates beginning in calendar year 1995. Each current schedule contractor will be required to provide electronic contract/catalog data relating to product descriptions, price, and related terms and conditions. The data must be submitted using the American National Standards Institute (ANSI) Transaction Set 832 Price Sales Catalog Format. Orders placed through **GSA Advantage!** use the Accredited Standards Committee (ASC) X12 format for Transaction Set 850: Purchase Orders.

In the very near future, GSA will announce the targeted schedules. At that time, a complete timeline for bringing our remaining schedules on-line will be published. Contracts will be modified as necessary to require the use of X12 standard transaction sets. Vendors who have questions regarding this format, or the system roll out, may leave a voice mail message at (703) 305-7359

Customers and Vendors are invited to browse GSA's progress today!

The only tools needed to access **GSA Advantage!** are:

- access to the Internet world wide web
- an Internet browser such as MOSAIC, etc.

**Our current Internet address is: <http://www.gsa.gov>**

Soon, GSA will be providing access for non-Internet users.

# WHEN?

An ambitious implementation schedule has been undertaken:

- GSA Supply Catalog available for browsing NOW!
- Ordering capability and order status by Summer 95.
- GSA Schedule items and GSA Retail items phased in beginning Summer 95.

If you would like more information about this exciting initiative please contact:

GSA Federal Supply Service  
Acquisition Operations & Electronic Commerce Center/FCS  
Washington, DC 20406

or leave a message on (703) 305-7359

or

write to the Internet E-Mail Address:

GSA.ADVANTAGE@gsa.gov